

PROPOSED

DEVELOPMENT AGREEMENT

AMONG

THE CITY OF SAN ANTONIO, TEXAS,

**CIBOLO CANYON CONSERVATION AND
IMPROVEMENT DISTRICT NO. 1,**

AND

LUMBERMEN'S INVESTMENT CORPORATION

DRAFT: 04-01-02

**THIS IS A DRAFT FOR DISCUSSION PURPOSES ONLY. NO PARTY
IDENTIFIED IN THIS DRAFT HAS AGREED (EXPRESSLY OR BY
ACQUIESCENCE) TO ANY OF THE TERMS OR PROVISIONS INCLUDED
IN THIS DRAFT UNLESS AND UNTIL ALL PARTIES HAVE BEEN
AUTHORIZED TO SIGN, AND HAVE SIGNED, THIS DOCUMENT.**

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EXHIBITS:

- A Public Improvements
- B Development Plan
- C Development Schedule
- D Golf Course Management Plan
- E Land Use Restrictions
- F Form of Letter of Credit
- G Form of Municipal Services Agreement
- H Property Description of Open Space Restricted Tracts

- i. Tract 1 - 247.1 acres comprised of: Tract 1A - 234.9 acres and Tract 1B - 12.2 acres
- ii. Tract 2 - 594.61 acres, being 785.4 acres save and except Tract 2A - 113.1 acres and
save and except Tract 2B - 77.69 acres
- iii. Tract 3 - 258.1 acres
- I Form of Trail Head Tract Lease
- J Form of Water Provision Agreement
- K Form of Water Service Agreement Letter

**DEVELOPMENT AGREEMENT AMONG THE CITY OF SAN ANTONIO, TEXAS,
CIBOLO CANYON CONSERVATION AND IMPROVEMENT DISTRICT NO. 1,
AND LUMBERMEN'S INVESTMENT CORPORATION**

This **DEVELOPMENT AGREEMENT** (*the "Development Agreement"*) is made and entered into as of the date set forth below by and among **THE CITY OF SAN ANTONIO, TEXAS ("City")** and **LUMBERMEN'S INVESTMENT CORPORATION ("Developer")**, subject to execution and ratification of this Development Agreement by **CIBOLO CANYON CONSERVATION AND IMPROVEMENT DISTRICT NO. 1 ("District")** upon the Election Date (herein defined), as herein set forth.

RECITALS

Developer owns the Land (herein defined) located within the exclusive extraterritorial jurisdiction of City, which Land is more fully described in the Act (herein defined). The Land contains geological features vital to City's underground water supply. Portions of the Land are situated within the Edwards Aquifer Recharge Zone and have unique plant and animal habitat.

Developer desires to develop the Land with a high quality, master-planned community, with at least one full service, resort style hotel, single and multi-family residential housing, related commercial uses and up to three (3) eighteen (18) hole golf courses. To facilitate such development and to serve a public use and benefit, the Legislature of the State of Texas established District in Bexar County, Texas, as a conservation and reclamation district, as set forth in the Act. Pursuant to the Act, the establishment of District by the Legislature is subject to a confirmation election which may not be held until City has approved an acceptable agreement concerning the development and annexation of the property within District, the operation of District and District's debt.

City seeks an agreement with Developer which (i) provides for Open Space (herein defined), (ii) limits development of the Land which unduly decreases the number of recharge features supporting the Edwards Aquifer, which is City's primary supply of water, and (iii) is consistent with either the development standards applicable to land within City's corporate limits or City's future growth and expansion of its corporate limits. City and Developer have identified certain portions of the Land which will remain as Open Space. Developer has agreed to donate to the Nature Conservancy (herein defined) all of the Open Space Restrictive Tracts (herein defined), in accordance with the terms and conditions set forth in this Development Agreement.

It is the intent of this Development Agreement to define City's regulatory authority over the Land, to

establish an approved plan for the development of the Land, to establish certain restrictions and commitments imposed and made in connection with the development of the Land, to provide certainty to Developer and District concerning annexation and uses of the Land, to fulfill the requirement of the “development agreement” described in the Act and to additionally satisfy development, land use, water conservation, annexation, financial and environmental concerns of City and Developer. Accordingly, City, District and Developer are proceeding in reliance on the enforceability of this Development Agreement.

This Development Agreement is authorized by the Act and is also authorized by City’s broad and inherent authority, as a home-rule municipality under Article 11, Section 5, of the Texas Constitution, to exercise land-use planning and regulatory authority over its extraterritorial jurisdiction.

City enters into this Development Agreement on its behalf and on behalf of San Antonio Water System, the City - owned purveyor of water and sewer services.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

DEFINITIONS AND INTERPRETATIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Development Agreement has the meaning set forth below, unless the context in which such term or phrase is used in this Development Agreement clearly indicates otherwise:

“**Act**” means Senate Bill 1629, Acts of the 77th Legislature of the State of Texas, Regular Session 2001.

“**Annual Debt Service Requirements**” means, for any Fiscal Year, the total payments of principal and interest due and payable in such Fiscal Year according to the terms of the Bonds.

“**Bonds**” means Senior Bonds and Subordinate Bonds.

“**Cibolo Canyon Extension**” means the Public Improvement relating to the construction of the public roadway from the U.S. 281/Stone Oak Parkway intersection to Bulverde Road, as described in Exhibit A.

“**City**” means City of San Antonio, Texas, a home rule city and municipal corporation primarily situated in Bexar County, Texas.

“**City Code**” means the City Code of San Antonio, Texas, enacted by the City Council, which constitutes the code of civil and criminal ordinances of City.

“**City Council**” means the City Council of City of San Antonio, Texas, or any successor governing body.

“**City Representative**” means the Acting Director or Director of Development Services or his/her replacement identified by the City Manager of City of San Antonio, Texas, with notice of such replacement given to District Representative and Developer Representative in accordance with this Development Agreement.

“**Completion**” or “**Complete**” means the completion of the applicable work and improvements in accordance

with all applicable Governmental Rules and substantially in accordance with the plans and specifications and other requirements, if any, contained in this Development Agreement such that, subject only to minor punch-list type items, all such work and improvements are finally complete and regardless of such punch-list type items, all improvements are ready for use for their intended purposes and are fully capable of such use.

“Confirmation Election” means the election to be held in accordance with the Act to confirm the establishment of District and to elect the initial directors of District.

“Controlling Interest” means control of a majority of the outstanding stock of Developer or the ability to control a majority interest of the Board of Directors of Developer.

“County” means Bexar County, Texas.

“Developer” means the Lumbermen’s Investment Corporation, a corporation organized under the laws of the State of Delaware and qualified to do business in Texas, its successors and assigns.

“Developer Entity” means any individual, partnership, corporation or other entity which directly or indirectly has, owns or controls any interest in Developer.

“Developer Representative” means John K. Pierret or his replacement identified by Developer, with notice of such replacement given to District Representative and City Representative in accordance with this Development Agreement.

“Developer Transfer” means of sale, assignment, transference, conveyance, gift, pledge, mortgage or encumbrance of a Developer Entities’ interest in Developer.

“Development Agreement” means this Development Agreement.

“Development Plan” means the master development plan for the proposed development of the Land, which has been submitted to City for approval in accordance with the UDC and a copy of which is attached hereto as Exhibit B, and any subsequent amendments thereto, from time to time, in accordance with this Development Agreement or required by the terms of City’s approval.

“Development Schedule” means the written schedule prepared by Developer and District and approved by City reflecting the agreed target dates for the start and/or completion of certain Public Improvements, a copy of which is attached to this Development Agreement as Exhibit C.

“Director of ID” means the Director of Infrastructure Development of SAWS or his/her designated representative.

“Director of Parks” means City’s Director of Parks and Recreation or his/her designated representative.

“Director of Planning” means City’s Director of Planning or his/her designated representative.

“Director of Public Works” means the Director of Public Works of City or his/her designated representative.

“Discharge” (or **“Discharged”**) means if and when the whole amount of the principal, premium (if any) and interest due and payable upon all of the Bonds shall be paid or deemed paid by deposit in escrow with an authorized agent of an amount, or federal securities verified by a certified public accountant to be, sufficient to meet all requirements of the Bonds, as the same become due on the earlier to occur of (i) the next succeeding call date, (ii) the

final maturity date, or (iii) any redemption date as of which a redemption option (if any) is exercised by a call of the Bonds for payment, to the effect that the amount of such escrow will be sufficient to cause all amounts due in connection with the Bonds to be paid when due until the earlier to occur of (i), (ii), or (iii) above; provided, however, that payment shall not be deemed made by a deposit by Developer until it is determined by City, based upon a certificate of Developer or other evidence reasonably acceptable to City, that no petition for relief under the federal Bankruptcy Code (11 U.S.C. § 101 et. seq.) has been filed by or against Developer within ninety-one (91) days after the deposit by Developer of any moneys or securities in escrow for payment of the Bonds or to cause such payment; and provided, further, that payment shall be deemed made by a deposit by District until it is determined by City, based upon a certificate of District or other evidence reasonably acceptable to City, that no petition for relief under the federal Bankruptcy Code has been filed by or against District within ninety-one (91) days after the deposit by District of any moneys or securities in escrow for payment of the Bonds to cause such payment.

“District” means the Cibolo Canyon Conservation and Improvement District No. 1, a conservation and reclamation district created by the Act, and all subdistricts created by District subject to this Development Agreement.

“District Representative” means the person so designated by resolution of the Board of Directors of District or his/her replacement identified by District, with notice of the identity of the person initially designated to serve as District Representative and each subsequent replacement to be given in writing to City Representative and Developer Representative in accordance with this Development Agreement.

“EAA” means the Edwards Aquifer Authority.

“EARZ” means the Edwards Aquifer Recharge Zone.

“EDU” means equivalent dwelling unit.

“Election Date” means the date on which the election contest period for the Confirmation Election has expired.

“ETJ” means the extraterritorial jurisdiction of City established pursuant to Chapter 212, Texas Local Government Code, as amended.

“Execution Date” means the later of (i) the date on which this Development Agreement, having been signed by Developer, is also signed by City or (ii) ten (10) days after City Council has approved execution of this Development Agreement on behalf of City.

“Fair Market Value” means the price that a willing seller, under no compunction to sell, would accept from a willing purchaser, under no compunction to buy, as determined by the mutual agreement of District (after an appraisal), Developer and City or, in the absence of a mutual agreement, by (i) the average of two appraisals, one prepared by an appraiser selected by City Council and one prepared by an appraiser selected by Developer, if the difference between the two appraisals does not exceed 10% of the higher of such two appraisals, or (ii) if those two appraisals vary by more than 10%, by an appraisal prepared by a third appraiser jointly selected by the appraiser selected by City Council and the appraiser selected by Developer.

“Fiscal Consultant” means an independent person, firm or corporation selected by District and reasonably

acceptable to City and Developer and having a widely known and favorable reputation for special skill, knowledge and experience in methods of (i) evaluating real estate developments of similar size and character as the Project and (ii) projecting the tax rate required to meet projected Annual Debt Service Requirements using projected assessed valuations and an appropriate tax collection rate.

“Fiscal Year” means the fiscal year designated by City, which currently ends on September 30 of each calendar year, which shall be the same fiscal year adopted by District.

“Full Time Employee” means an employee of the owner of a hotel located on the Land, or that owner’s designated manager, who works a minimum of thirty (30) hours each week (except vacation, sick leave or other authorized absences) and receives benefits which include a health care plan with access to coverage for dependents, paid vacation and access to a 401(k) plan.

“Force Majeure Event” means labor disputes, casualties (which are not the result of gross negligence or misconduct of a Party or their respective subcontractors, agents, or employees); acts of God including all days of rainy weather in excess of the normal number of days of rainy weather for San Antonio, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or shipping; the public enemy; governmental embargo restrictions or other governmental action with general public application which interferes with the construction of the Public Improvement; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by District, Developer or their respective subcontractors, agents, or employees; or other delays due to causes beyond their control. For the purposes of the preceding sentence, a cause “beyond their control” does not include any act, omission, error or breach of duty of any person or entity that (i) directly or indirectly is able to direct or cause the direction of the management or policies of District or Developer, (ii) is subject to the direction of District or Developer, (iii) is in privity of contract with District or Developer with respect to the subject matter of this Development Agreement, (iv) is a contractor, subcontractor or sub-subcontractor providing labor or materials or other services in connection with such Public Improvement, or (v) is a limited liability company, joint venture, general partnership, or a limited partnership which in the case of a partnership has as its general partner, or in the case of a limited liability company, has any manager or member which is either (x) Developer or an affiliate of Developer or (y) a general partnership or limited partnership which has a general partner which is either Developer or a parent or subsidiary thereof.

“Geologic Map” means the site geological map attached to the Land Use Restrictions as Exhibit B thereto, as amended from time to time.

“Golf Course Management Plan” means the Cibolo Canyon Golf Course Development Environmental Management Plan in the form attached hereto as Exhibit D, and as may be amended or supplemented from time to time in accordance with the terms thereof.

“Golf Course/Open Space Tracts” means the portion of the Land so identified and described in the Land Use Restrictions.

“Governmental Authority” means any applicable federal, state, county or City governmental entity,

authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Project.

“Governmental Rules” means any statute, law, treaty, rule, code, ordinance, regulation, permit, official interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“Hotel” means the first full service, resort style hotel with approximately five hundred (500) guestrooms, to be built on the Hotel Tract.

“Hotel Commencement Date” means the date of the commencement of construction of the Hotel, as set forth in **Section 1.03(c)**.

“Hotel Completion Date” means the earlier to occur of (i) the first (1st) date on which a Certificate of Compliance for the Hotel has been issued by the Bexar County Fire Marshall, or (ii) the third (3rd) anniversary of the Hotel Commencement Date.

“Hotel Development Agreement” means the agreement(s) executed by Developer and Hotel Owner pursuant to which Hotel Owner is obligated to acquire the Hotel Tract from Developer and construct the Hotel, subject to the terms thereof.

“Hotel Management Agreement” means an agreement between Hotel Owner and Hotel Manager for the operation of the Hotel.

“Hotel Manager” means a hotel management company which operates full service, resort style properties and has access to an international reservation system supporting its operations.

“Hotel Owner” means SAHR, LLC, a Delaware limited liability company, or its assignee, or a similar developer of full service, resort style hotels.

“Hotel Tract” means the tract or parcel of land identified in the Development Plan as the site for the construction of the Hotel.

“Impervious Cover” means any roads, parking areas, buildings, pools, patios, sheds, driveways, sidewalks, and other impermeable construction covering the natural land surface.

“Inferior Debt” means the indebtedness of District described in **Subsection 10.05(c)** of this Development Agreement.

“Indexed Wage Standard” means the hourly Federal Minimum Wage (as established by the Fair Labor Standards Act) in effect on the Hotel Completion Date plus fifteen percent (15%) thereof.

“Land” means 2,861.0294 acres of land, more or less, as described in the Act and such additional lands as may be added to District pursuant to the Act and this Development Agreement, from time to time.

“Land Use Restrictions” means the Declaration of Restrictive Covenants in the form attached hereto as in Exhibit E and all exhibits thereto, to be filed for record in Bexar County, Texas, in accordance with this Development Agreement.

“Letter of Credit” means each irrevocable letter of credit to be provided to City by Developer pursuant to this Development Agreement, or an extension thereof, in form and content reasonably acceptable to City and issued

by a financial institution reasonably acceptable to City, payable by the issuer thereof upon sight draft, substantially in the form attached hereto as Exhibit F.

“Major Thoroughfare Plan” means the plan adopted by City Council September 21, 1978, as amended, which reflects proposed locations of major thoroughfares in the ETJ.

“Milestones” means those events as more fully described in **Section 1.03** of this Development Agreement.

“Mitigation” means as defined in 40 C.F.R. § 1508.20.

“Municipal Services Agreement” means the Firefighting Services Agreement For Cibolo Canyon Conservation and Improvement District No. 1 between City and District for the provision of fire protection for the Project and its inhabitants, in the form attached hereto as Exhibit G.

“Nature Conservancy” means the Nature Conservancy, a Delaware non-profit corporation, or other similar organization mutually agreed to by the Parties, who shall serve as City’s agent for the purpose of acquiring real property rights for the purposes of the sales tax proposition approved by the voters of City on May 6, 2000 and known as Proposition “3.”

“OED” means City’s Office of Economic Development.

“OIR” means City’s Office of Internal Review.

“Official Records” means the Official Public Records of Real Property of Bexar County, Texas.

“Open Space” means a land or water area for human use and enjoyment which is relatively free of man-made structures.

“Open Space Restricted Tracts” means the tracts of land described in Exhibit H to this Development Agreement, subject to amendment of the descriptions of such tracts in accordance with **Subsection 4.01(h)**.

“Operating and Maintenance Expenses” means the non-capital expenses of District necessary for compliance with this Development Agreement, for salaries, labor, material, repairs, services, monitoring water uses and water quality, and other customary and ordinary expenses for special taxing districts.

“Party” or “Parties” means a party or the parties to this Development Agreement, being City, Developer, and District.

“Payment Bond” means a bond of a corporate surety licensed in the State of Texas, such bond and surety approved by the Director of Public Works, issued solely for the protection and use of those payment beneficiaries who have a direct contractual relationship with Developer, the contractor, a subcontractor or material supplier related to the work, or their contractual assignees, in a penal sum equal to the penal sum of the related Performance Bond. A Payment Bond shall authorize payment for (i) labor used to carry out the work under the construction contract, (ii) materials used or ordered, delivered for use, directly to carry out such work, (iii) specially fabricated material, (iv) rental and running repair costs for construction equipment used or required and delivered for use, directly to carry out the work at the worksite, and (v) power, water, fuel and lubricants used, or ordered and delivered for use, directly to carry out the work.

“Performance Bond” means a bond of a corporate surety licensed in the State of Texas, such bond and issuer approved by the Director of Public Works, issued for the benefit of City and/or District, as appropriate, in the

penal sum equal to one hundred percent (100%) of the cost of the work as set forth in the budget attached to the construction contract(s) for the applicable Public Improvement undertaken by Developer or District pursuant to this Development Agreement and being sufficient to fund the costs of Completion of the work described in such construction contract(s) in accordance with the terms thereof.

“Permitted Transfer” means as defined in **Section 15.04** hereof.

“POADP No. 452” means the Evans Road Tract Subdivision Preliminary Overall Area Development Plan No. 452, accepted by City subject to the terms and conditions set forth in letter dated January 20, 1995, from David W. Pasley, Director of Planning, Department of Planning, City of San Antonio, to Rueben (sic) Cervantes, Pape-Dawson Engineers.

“PGA” means the Professional Golfers’ Association of America.

“PGA Agreement” means the agreement(s) between PGA and Developer pursuant to which PGA will construct, acquire and/or operate the PGA Complex.

“PGA Complex” means the golfing resort to be constructed, acquired and/or operated by PGA, comprised of not fewer than two (2) golf courses, a learning center and related amenities on the tract(s) of land so identified in the Development Plan.

“PGA Golf Course Tracts” means Tract 1 and Tract 2 (as defined and described in the Land Use Restrictions).

“Project” means the entire proposed development of the Land as set forth in the Development Plan.

“Public Improvements” means those public improvement projects to be constructed inside and outside District as defined and described in Exhibit A.

“Reimbursement Agreement” means any agreement between Developer and District whereby Developer advances funds to District pursuant to **Subsection 10.05(d)** of this Development Agreement.

“Revenues” means all of the revenues and income of every nature and from whatever source derived by District (but excluding grants and donations for capital purposes) including, but not limited to, ad valorem taxes, hotel occupancy taxes, sales taxes, impact fees, other available revenues and the balances in any fund accounts of District, but excluding any debt service reserve fund.

“SAWS” means the San Antonio Water System, the City-owned purveyor of water and sewer services.

“Semi-Annual Period” means (i) January 1 through June 30, inclusive, or (ii) July 1 through December 31, inclusive.

“Senior Bonds” means evidences of debt of District as described in **Subsection 10.05(a)** hereof.

“Sewer Contract” means the “OSA Sewer Service Contract” dated February 29, 2000, between City and Developer.

“State” means the State of Texas.

“Stated Termination Date” means September 30th of the thirteenth (13th) year following the Tax Delinquency Date. For the purposes hereof, the “Tax Delinquency Date” is February 1 of the first (1st) calendar year following the Hotel Completion Date.

For example, if the Hotel Completion Date occurs during calendar year 2005, the Tax Delinquency Date would be February 1, 2006, and the Stated Termination Date would be September 30, 2019.

“Subordinate Bonds” means evidences of debt of District as described in **Subsection 10.05(b)** hereof.

“Termination Event” means those events described in ARTICLE 14 which give rise to the automatic or optional termination of this Development Agreement.

“TNRCC” means the Texas Natural Resource Conservation Commission and its successors.

“Trail Head Improvements” means those Public Improvements so identified, defined and described in Exhibit A.

“Trail Head Tract Lease” means a lease of the Trail Head Tract to City substantially in the form attached hereto as Exhibit I.

“Trail Head Tract” means the 2.00 acre tract (more or less) shown in the Development Plan, to be acquired by District and to be leased to City pursuant to the Trail Head Tract Lease.

“Trinity Wells” means all water wells now existing or to be hereafter located on the Land completed to draw water from the Trinity Aquifer.

“Unified Development Code” or **“UDC”** means Chapter 35 of the “City Code of City of San Antonio” as it exists on the Execution Date and any subsequent amendments to those sections of the UDC which address or cover drainage, flood plain regulation and aquifer protection.

“Vested Rights Permit” means the Vested Rights Permit Application numbered “VRP 01-11-38” dated November 13, 2001, approved by City on December 7, 2001.

“Wage Standard” means the monetary hourly wage paid to an employee for work performed plus documented tips.

“Water Contract” means, collectively, (i) the Water Provision Agreement between City and Developer, in the form attached to this Development Agreement as Exhibit J and (ii) the Water Service Agreement, in the form attached hereto as Exhibit K.

“Water/Wastewater Construction Standards” means, collectively, all rules, procedures, practices and policies of SAWS regarding construction of utility facilities, including (without implied limitation) the “San Antonio Water System’s Specifications for Water and Sanitary Sewer Construction” dated October, 2001, SAWS Regulations for Water Service, and all other such requirements, as amended, supplemented or superceded from time to time.

“Water Pollution Abatement Plan” means the water pollution abatement plan and other Edwards Aquifer Protection Plan requirements which must be submitted for approval by SAWS, EAA and TNRCC in accordance with the Land Use Restrictions and 30 TAC Chapter 213.

“Water Provision Agreement” means the Water Provision Agreement between SAWS and Developer, in the form attached hereto as Exhibit J.

“Water Service Agreement” means the Water Service Agreement For Lumbermen’s Investment Corporation set forth in letter from SAWS to Pape-Dawson Engineers, Inc., in the form attached hereto as Exhibit K.

“WSJ Prime” means the prime rate of interest as most recently published in the Wall Street Journal prior to

the date of the calculation of any applicable rate of interest under this Development Agreement based upon such prime rate of interest. If the Wall Street Journal ceases to publish or announce a prime rate of interest, the Parties shall mutually agree upon a substituted, but comparable, interest rate index.

ARTICLE 1. INTRODUCTORY MATTERS; MILESTONES

Section 1.01. Term .

This Development Agreement shall commence on the execution hereof by District and shall terminate on the Stated Termination Date, unless terminated on an earlier date in accordance with this Development Agreement. In the event this Development Agreement does not take effect due to termination pursuant to the provisions hereof, or is terminated by mutual agreement of the Parties or other event, the Parties shall promptly execute a document confirming the termination of this Development Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurred.

Section 1.02. Execution Date .

As of the Execution Date, the following actions shall have been taken and/or confirmed by the Parties:

- (a) Development Plan . Developer has submitted the Development Plan, in accordance with the UDC, as a mandatory “Master Development Plan,” and the Director of Planning has approved the Development Plan, a copy of which is attached hereto as Exhibit B. City agrees that, although Developer has submitted the Development Plan as described herein, if this Development Agreement is terminated prior to the Hotel Commencement Date, Developer may withdraw its filing of the Development Plan and thereafter Developer’s POADP No. 452 will be deemed to be effective as if the Development Plan had not been submitted for approval.
- (b) Land Use Restrictions . Developer has filed for record, or caused to be filed for record, the Land Use Restrictions in the Official Records, subject to termination of such Land Use Restrictions as therein provided.
- (c) Municipal Services Agreement . City has agreed to provide fire protection services to District in accordance with the Municipal Services Agreement, subject to execution thereof by District, and upon District’s request, City shall execute and deliver to District the Municipal Services Agreement.
- (d) Letter of Intent from PGA . City has received a letter of intent from PGA confirming its commitment to the PGA Complex.
- (e) Geologic Map . The Geologic Map has been approved in writing by a majority of (i) a geologist selected by Developer, (ii) a geologist selected by SAWS, and (iii) a geologist selected by City Council. Such approval of the Geologic Map confirms that the Geologic Map identifies all sensitive features (as defined in 30 TAC § 213.3(27), as amended), known to exist on the Land as of the Execution Date, as well as areas for which additional study and determinations shall be required prior to development.

Section 1.03. Milestones .

- (a) Development Documents Date . Within six (6) months of the Execution Date, Developer shall

have entered into the following agreements, copies of which will be made available to City's consultant or legal counsel (as designated by City Representative) for review, subject to appropriate agreements of confidentiality. City's consultant or legal counsel shall review each agreement to determine if such agreement complies with the requirements set forth in this **Section 1.03**. City shall notify Developer and District of any discrepancies between each agreement and the requirements of this **Section 1.03**, within thirty (30) days of the date on which the subject agreement was provided to City's consultant or legal counsel, as applicable. Upon receipt of notice from City of any discrepancy, Developer shall have thirty (30) days to amend such agreement to remove or cure such discrepancy which time period shall run concurrently with the thirty (30) day cure period described in **Section 14.01**.

(i) **Hotel Development Agreement.** The Hotel Development Agreement, subject to no material contingencies other than:

- (1) occurrence of the Election Date;
- (2) the issuance of all necessary permits of Governmental Authorities for the construction of the Hotel and all related amenities;
- (3) loan commitments sufficient for financing of the construction costs of the Hotel and all related amenities;
- (4) the execution of the PGA Agreement by PGA; and
- (5) the execution of the Hotel Management Agreement by any party thereto other than Developer.

In addition, the Hotel Development Agreement shall require that the Hotel operations comply with the employment, wage, reporting and audit requirements set forth in **Section 1.05**.

(ii) **Hotel Management Agreement.** The Hotel Management Agreement, subject to no material contingencies other than:

- (1) occurrence of the Election Date;
- (2) the Completion of construction of the Hotel; and
- (3) the execution of the PGA Agreement by PGA.

The Hotel Management Agreement shall require that the Hotel operations comply with the employment, wage, reporting and audit requirements set forth in **Section 1.05** and shall result in the creation of 350 new jobs for permanent Full Time Employees, which number of new jobs shall be sustained in each year of the term of this Development Agreement.

(iii) **PGA Agreement.** The PGA Agreement, subject to no material contingencies other than:

- (1) occurrence of the Election Date;
- (2) the issuance of all necessary permits of Governmental Authorities for the construction of the PGA Complex; and
- (3) the Completion of construction of the Hotel; and
- (4) commitments for financing of the PGA Complex.

(b) **Confirmation Election and Election Date .** The Confirmation Election shall be held on September

14, 2002, provided City's Ordinance authorizing the execution of this Development Agreement has become final in accordance with the City's Charter and other applicable law in sufficient time to permit compliance by District with all notice and clearance requirements and, if not, on the next election date after such requirements have been met. District shall execute and thereby ratify this Development Agreement as of the Election Date and this Development Agreement shall be effective as of the Election Date.

(c) Hotel Commencement Date . Commencement of construction of the Hotel must have occurred on or before December 31, 2003. To comply with this Milestone, site grading on the Hotel Site shall have continued for not less than thirty (30) days. Developer shall provide to District and to City Representative written notice of the date on which the site grading has commenced on the Hotel Site and of the Hotel Commencement Date. The date required for commencement of construction may be extended as follows:

(i) The commencement of construction may be delayed until June 30, 2004, if Developer provides to City on or before December 31, 2003, an affidavit dated not more than thirty (30) days prior to December 31, 2003, which states that the Hotel Development Agreement, the Hotel Management Agreement and the PGA Agreement (1) remain in full force and effect, and (2) have not been amended to include any additional contingencies which were not included in the documents which were reviewed by City's consultant or counsel in accordance with **Subsection 1.03(a)** of this Development Agreement.

(ii) The commencement of construction may be further delayed until June 30, 2005, if Developer (having previously provided to City the affidavit required under the immediately preceding subsection) shall on or before June 1, 2004 (1) provide to City the affidavit required under the immediately preceding subsection dated not earlier than thirty (30) days prior to June 1, 2004, and (2) submit for review by City's consultant or counsel a revised Hotel Development Agreement which excludes all financing contingencies.

(d) Hotel Completion Date; Completion of PGA Complex . Developer shall cause the Hotel Owner to provide written notice to City and to District of the Hotel Completion Date. On the Hotel Completion Date, the PGA Complex shall also have been Completed

(e) PGA Golf Course Tracts . Not later than the Hotel Completion Date, Developer shall convey to District the PGA Golf Course Tracts in accordance with the terms set forth in **Section 4.02** of this Development Agreement and District shall have leased the PGA Golf Course Tracts to PGA in accordance with the PGA Agreement.

(f) Date of Conveyance of Open Space Restricted Tracts . Not later than the Hotel Completion Date, Developer shall convey the Open Space Restricted Tracts to the Nature Conservancy in accordance with the terms, conditions, and requirements set forth in **Section 4.01** of this Development Agreement.

(g) Date of Conveyance of Trail Head Tract . Not later than the Hotel Completion Date, Developer shall convey to District the Trail Head Tract in accordance with the terms, conditions and requirements set forth in **Section 4.03** of this Development Agreement.

(h) Trail Head Tract Lease . Immediately following the conveyance by Developer to District of the Trail Head Tract, the Trail Head Tract Lease shall be executed by District, as lessor, and delivered to City for

execution, as lessee.

(i) Trail Head Improvements . Not later than five (5) days' following written notice by City to District that City has executed the Trail Head Tract Lease as lessee, District shall pay to City the sum of \$115,000.00 in accordance with **Section 3.06** of this Development Agreement.

Section 1.04. Required Progress Reports .

Not less often than every third (3rd) month following the Hotel Commencement Date and ending on the Hotel Completion Date, Developer shall provide to City Representative a detailed progress report on the construction of the Hotel and of the PGA Complex, including the estimated time frame for Completion of such projects.

Section 1.05. Employment and Wage Requirements .

District shall cause the Hotel and each additional hotel constructed on the Land during the term of this Development Agreement to be operated in compliance with the employment, wage, reporting and audit requirements set forth in this **Section 1.05**.

(a) Wage Requirements . Not later than the Hotel Completion Date, all Full-Time Employees shall receive compensation at or above a Wage Standard of the greater of (i) the Indexed Wage Standard in effect at Hotel Completion Date or (ii) \$7.00 per hour. Not later than one (1) year after the Hotel Completion Date, all Full Time Employees shall receive compensation at or above a Wage Standard of \$8.50 per hour.

(b) Reporting Requirements . Not later than thirty (30) days following each Semi-Annual Period after Hotel Completion Date, the Director of OED shall receive written reports setting forth, for the preceding Semi-Annual Period, the actual number of Full Time Employees and the actual number of those Full Time Employees which meet or exceed each of the Wage Requirements of **Subsection 1.05(a)** above.

(c) Audit Requirements . OED shall have access to the employment records of the subject Hotel (whether the same are located at the Hotel or elsewhere) as reasonably determined necessary by OED to verify whether Developer is in compliance with this **Section 1.05**. Following reasonable notice and during normal business hours, any such employee books and records will be reviewed by OED at the site where the same may be located during the normal course of business and OED shall not be entitled to make copies of the same unless otherwise approved by the owner of such books and records. Any information which is not required by law to be made public shall be maintained confidential by OED. Should any dispute or question arise as to the validity of the data made available to OED, City shall have the right to retain an independent firm to verify the information. This certified statement by an independent firm will be provided at the sole cost of City, unless it is determined that the data made available to OED is inaccurate in any material respect, in which case the cost of the certified statement shall be paid by Developer.

ARTICLE 2. DEVELOPMENT PLAN

Section 2.01. Amendment of Developer's Vested Rights .

Developer agrees that, from and after the Execution Date:

- (a) Impervious Cover will be limited to no more than fifteen percent (15%) of the total surface area of the Land, calculated in the manner described in the UDC.
- (b) Notwithstanding **Subsection 2.01(a)** above, if this Development Agreement shall terminate prior to the Hotel Commencement Date, Developer and City agree that all vested rights accruing to Developer pursuant to the Vested Rights Permit shall survive such termination and the provisions of **Section 2.01** shall not apply to the Land.
- (c) Notwithstanding **Subsections 2.01(a) and 2.01(b)** above, if this Development Agreement shall terminate on or after the Hotel Commencement Date, but prior to the Hotel Completion Date, Developer and City agree that the Land will be re-classified as Category 2 property for the purposes of determining permitted Impervious Cover pursuant to Chapter 34 of the City Code, except Tract 2 of the Open Space Restricted Tracts, which will remain as Category 3 property for the purposes of Chapter 34 of the City Code. In such event, all other rights accruing to Developer pursuant to the Vested Rights Permit, if any, shall survive such termination.

The provisions of this **Section 2.01** shall survive any termination of this Development Agreement.

Section 2.02. Application of City Codes .

Notwithstanding the applicability of Section 34-926 of the City Code to any portion of the Land, Developer and District agree:

- (a) Application of UDC . Development of the Land will be subject to and governed by all provisions and requirements of the UDC generally applicable to real property and improvements located within the ETJ.
- (b) Certain Ordinances . The Land will be subject to, and Developer and District shall abide by and comply with, all of City's ordinances regarding drainage, flood plain regulation and aquifer protection and any amendments to City ordinances including, without limitation, those ordinances identified in the Land Use Restrictions.
- (c) EARZ . Without limiting the generality of the foregoing **Subsection 2.02(b)**, District and Developer shall comply with all applicable Governmental Rules concerning or affecting development in the EARZ and protection of the Edwards Aquifer, including, without implied limitation, the requirements of the UDC and the regulations of the TNRCC.
- (d) Tree Preservation Ordinance . Without limiting the generality of the foregoing **Subsection 2.02(a)**, the Tree Preservation Ordinance as set forth in Section 35-523 of the City Code will apply to the Land.
- (e) Storm Water Management . Section 35-504, Storm Water Management, will apply to the Land.

This **Section 2.02** shall survive any termination of this Development Agreement which occurs after the Hotel Completion Date in accordance with the Land Use Restrictions.

Section 2.03. Amendment of Development Plan .

Any proposed amendment of the Development Plan shall be submitted to the City Representative at the same time that such proposed amendment is submitted to the Director of Planning in accordance with the UDC. Revisions to the Development Plan shall be classified as minor or major revisions, as provided in the UDC. Minor Revisions shall be administratively accepted and will not be subject to review by City agencies or departments. For the purposes of this Development Agreement, major revisions of the Development Plan shall be dealt with accordingly under the provisions of Section 35-345 of the UDC and include (without implied limitation): (i) any increase in the total number of residential units in the entire Development Plan, (ii) any increase in the total commercial acreage within the Development Plan, (iii) any increase in the total acreage within the Development Plan, (iv) any increase in total cumulative traffic impacts of the entire Development Plan upon outlying transportation infrastructure, (v) any decrease above five percent (5%) in the total Open Space acreage within the Development Plan, (vi) any decrease in perimeter buffers between the Development Plan and adjacent properties; and (vii) any changes in a proposed land use node from residential to an office, commercial or light industrial use, if the property where the proposed change is to occur abuts existing property in which the principal use is single family residences. City's approval rights do not subject the Land to City's zoning authority; such jurisdictional authority shall only be acquired upon annexation. However, the land uses identified on the Development Plan (i) reflect land uses which are consistent with the water demands and usage anticipated by the Project, (ii) reflect sewage flows which are consistent with the wastewater demands and flows anticipated by the Project (iii) preserve the Open Space Restricted Tracts and Golf Course/Open Space Tracts and (iv) preserve the flood plain areas. Notwithstanding the foregoing, the Development Plan may not be amended by Developer in any manner which is contrary to the terms of this Development Agreement (including, without limitation, the Land Use Restrictions) without City Council's approval.

Section 2.04. Water Pollution Abatement Plan .

The Parties have agreed, and the Land Use Restrictions provide, that no development of any portion of the Land may be undertaken unless and until (i) a WPAP application has been prepared covering the portion of the Land to be developed, based upon a prior geologic assessment of such portion of the Land and other requirements of TNRCC now or hereafter in effect, (ii) the WPAP and all supporting data have been submitted to SAWS and EAA prior to submission to TNRCC, (iii) SAWS and EAA have approved the WPAP. Approval of SAWS and EAA shall be given, deemed given or withheld in accordance with the Land Use Restrictions. Any WPAP submitted to TNRCC prior to the Execution Date need not be resubmitted to TNRCC so long as such prior WPAP submittal has been approved in writing by SAWS and EAA. As a condition to approval by SAWS of each WPAP for a Public Improvement, such WPAP shall specify the on-going management practices and monitoring requirements to be implemented by the plan applicant to safeguard ground water and surface water quality which may be impacted by such Public Improvement.

Section 2.05. Development Fees .

Developer and District agree to pay City all application, plan review, plat review, and filing fees applicable to the approval of subdivision plats in the ETJ and all fees (including, without limitation, impact fees, traffic impact analysis fees, water/wastewater impact fees, water supply fees, general benefit fees and stormwater management fees) assessed with respect to the Project at the times and in the amounts set forth in the UDC, the Water Contract and the Sewer Contract, as applicable. Such fees will be the standard fees in effect on the Execution Date.

Section 2.06. Moratoria on Building in District .

The Parties agree that one of the primary purposes of this Development Agreement is to provide certainty as to the regulatory requirements applicable to the development of the Land for a reasonable period of time. Feasibility of the development of the Land is dependent upon a predictable regulatory environment and stability in the projected uses of the Land. In exchange for Developer's and District's performance of the obligations described in this Development Agreement, City agrees that it will not impose or attempt to impose any moratoria on development or construction within District, so long as such development or construction complies with this Development Agreement and with the Development Plan.

Section 2.07. Amendment of Major Thoroughfare Plan .

City agrees to amend the Major Thoroughfare Plan to delete all roadways located on the Land.

Section 2.08. Quarterly Environmental Reports .

During the term of this Development Agreement, SAWS shall provide to District and the City Council written reports, not less often than quarterly, setting forth (a) environmental issues applicable to the Land; (b) compliance issues under the Golf Course Management Plan; and (c) action taken by SAWS on WPAP applications pursuant to the Land Use Restrictions since the date of the prior quarterly report.

ARTICLE 3. PUBLIC IMPROVEMENTS

Section 3.01. Reimbursement to Developer .

To the extent that Developer shall perform the obligation of District to construct or Complete any or all of the Public Improvements and shall otherwise observe and perform Developer's obligations and agreements under this Development Agreement, District shall reimburse Developer for the expenditures of Developer in connection therewith to the extent permitted by applicable Governmental Rules and by this Development Agreement.

Section 3.02. Benefit of Public Improvements .

As a material condition to City's agreements under this Development Agreement, District and Developer have agreed and confirmed to City that all Public Improvements, upon Completion, will be of direct, material benefit to District. Developer shall, on or before the applicable date set forth in the Development Schedule, undertake and

Complete and/or acquire, as applicable, the Public Improvements identified in Exhibit A, subject to the terms and conditions set forth in this Development Agreement and any Reimbursement Agreement.

Section 3.03. Application of City Codes .

Although the Land is located in the ETJ, all improvements and construction in connection with each Public Improvement shall comply with those provisions of the City Code (including, without limitation, the City Code of Ordinances, the City Building Code-General Provisions, the City Electrical Code, the City Mechanical Code, the City Plumbing Code, the City Fire Code and the Unified Development Code) which would be applicable if each Public Improvement were constructed within the corporate limits of City, if any. Notwithstanding the foregoing, the improvements and construction related to the Public Improvements located in the ETJ will not require the issuance of City building permits.

Section 3.04. Public Bid, Award and Contracting .

All Public Improvements constructed on the Land shall comply with the design, competitive bid, award, contracting and construction requirements as applicable to publicly funded improvement projects under Governmental Rules.

Section 3.05. Cibolo Canyon Extension .

District shall undertake and Complete, at District's sole expense, the Cibolo Canyon Extension, on or before the expiration of three (3) years following the later to occur of (i) acquisition by City of the right-of-way for the Cibolo Canyon Extension, to the extent required for the construction of a secondary arterial roadway under the UDC, or (ii) the Hotel Completion Date. The Cibolo Canyon Extension will be subject to all requirements applicable to public improvement projects under applicable Governmental Rules. The Cibolo Canyon Extension shall comply with the Major Thoroughfare Plan

(a) Design Obligations . Not later than thirty (30) days following the date that City has notified District that City has acquired all required right-of-way for the Cibolo Canyon Extension, District shall commence preparation of all required plans and specifications for the construction of the Cibolo Canyon Extension, including without limitation, preparation and submission of a WPAP to SAWS, EAA and TRNCC. All completed designs, plans and specifications prepared by District for the Cibolo Canyon Extension must be submitted to and approved by the Director of Public Works, before any site work may commence. Approval by the Director of Public Works is in addition to the usual and customary approvals required by City Codes for construction projects. Once approved, said plans and specifications shall not be materially modified without the prior written consent of the Director of Public Works, which consent shall not be unreasonably withheld.

(b) Construction Contract . The construction contract(s) for the Cibolo Canyon Extension must be approved by the Director of Public Works, which approval will not be unreasonably withheld, and work shall not commence under such contract(s) unless and until such approval has been obtained. All contractors performing

work on the Cibolo Canyon Extension must provide an approved Payment Bond and a Performance Bond. Any delay by City in exercising its approval rights for more than sixty (60) days after complete documentation has been provided to City in connection therewith (including, without limitation, all supplemental documentation reasonably requested by City) will extend the three (3) year period described in this **Section 3.05**.

(c) Cibolo Canyon Extension Letter of Credit . Developer shall provide to City a Letter of Credit in the stated amount of \$4,000,000.00 not later than thirty (30) days following the Hotel Completion Date and annually thereafter until Completion of the Cibolo Canyon Extension. The Letter of Credit shall be issued to City and be immediately available for funding. City may draw upon the Letter of Credit for the full stated amount thereof (i) if District has not Completed construction of the Cibolo Canyon Extension in accordance with this **Section 3.05**, or (ii) three hundred fifty (350) days after the date of issuance of such Letter of Credit if Developer has failed to provide the replacement Letter of Credit therefor, or (iii) the date on which this Development Agreement is terminated, if the Cibolo Canyon Extension is not then Completed. City shall use any amount drawn under such Letter of Credit solely for the Cibolo Canyon Extension, and any amounts drawn by City under the Letter of Credit not required for Completion of the Cibolo Canyon Extension shall be paid to Developer.

(d) Approval of Payment and Performance Bonds . At least thirty (30) days prior to commencement of construction under each approved construction contract, District shall submit the required Payment and Performance Bonds to the Director of Public Works for approval. When approved, the Director of Public Works shall so advise District by written notice. When City has received the Payment and Performance Bonds required pursuant to **Subsection 3.05(b)** hereof covering all of the improvements required for the Completion of the Cibolo Canyon Extension, City shall return the Letter of Credit required pursuant to **Subsection 3.05(c)** hereof.

Section 3.06. Trail Head Improvements .

As provided in **Subsection 1.03(i)**, District shall pay to City the sum of \$115,000.00. As consideration for such payment by District, City shall use all of such funds to construct the Trail Head Improvements and any portion of such \$115,000.00 not so expended shall be returned by City to District.

Section 3.07. Effect of City Approvals .

City approvals required under this ARTICLE 3 are limited to the purposes of this Development Agreement and do not reflect any commitment, approval, representation, warranty or obligation with respect to the sufficiency, accuracy, completeness or integrity of any matters so approved by City, all of which are expressly disclaimed by City. Each approval of the Public Improvements required of City under the terms of this Development Agreement is in addition to the usual and customary approvals required for construction or development under City Codes.

Section 3.08. Non-Discrimination .

With respect to the Public Improvements, District operations and professional services:

(a) Non-Discrimination . Developer and District shall not discriminate against any individual or group

on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Developer and District shall abide by all applicable terms and provisions of City's Non-Discrimination Policy, a copy of which policy being available in City's OED, OIR, Department of Human Resources and the City Clerk's Office.

(b) Adherence to Advocacy Policy . Developer and District shall abide by all applicable terms and provisions of City's Small, Minority or Woman-Owned Business Advocacy Policy. A copy of such policy is available in City's OED, OIR, Department of Human Resources and the City Clerk's Office.

(c) Adherence to Affirmative Action Policy . Developer and District shall abide by all applicable terms and provisions of City's Equal Opportunity Affirmative Action policy. A copy of such policy is available in City's OED, OIR, Department of Human Resources and the City Clerk's Office.

(d) Good Faith Effort Plan . Not later than sixty (60) days following the ratification of this Development Agreement by District, Developer and District shall submit a Good Faith Effort Plan to the City's OED. If material deficiencies in any aspect of the Small, Minority and Woman-Owned Business Enterprise utilization plan as set forth in either Developer's plan or District's plan are found as a result of a review or investigation conducted by City's OED, Developer and District, as applicable, will be required to submit a written report to City's OED. Developer and District, as applicable, shall also be required to submit a supplemental Good Faith Effort Plan indicating its efforts to resolve any identified deficiencies. A denied plan, by the City's OED, will constitute failure to satisfactorily resolve any such deficiencies by Developer and District.

ARTICLE 4. CONVEYANCES

Section 4.01. Open Space Restricted Tracts .

The Open Space Restricted Tracts shall be conveyed by Developer as a donation to the Nature Conservancy, not later than the Hotel Completion Date, subject to the terms, conditions and requirements set forth herein.

(a) Permitted Uses Prior to Conveyance. Prior to conveyance to the Nature Conservancy, only the following uses and activities on the Open Space Restricted Tracts are permitted:

- (i) Natural habitat parks with indigenous wildlife, plants and ecosystems.
- (ii) Passive recreational uses, including nature trails;
- (iii) Drainage control facilities;
- (iv) Measures to control invasive species of plant and animal life detrimental to the conservation values of the Open Space Restricted Tracts;
- (v) Construction of firebreaks and minimal roadways for ingress and egress for fire, emergency medical and police services;
- (vi) Removal of diseased or non-native trees, shrubs or plants;
- (vii) Measures to monitor plant and wildlife populations, plant communities and natural

habitats on the Open Space Restricted Tracts;

(viii) Construction of perimeter fences and cross-fences as necessary to protect the Open Space Restricted Tracts; and

(ix) Use of existing unpaved, internal ranch roads presently located on the Open Space Restricted Tracts, solely for purposes of ingress and egress to and from the tracts of land adjacent to the Open Space Restricted Tracts, subject to such terms and conditions as City may impose from time to time.

(b) Prohibited Uses Prior to Conveyance . Prior to conveyance to the Nature Conservancy, Developer shall not undertake, or permit or suffer others to undertake, any of the following prohibited uses on any part of the Open Space Restricted Tracts, except to the extent undertaken in furtherance of a permitted use described in **Subsection 4.01(a)** above:

- (i) There shall be no placement or construction of Impervious Cover.
- (ii) The Open Space Restricted Tracts may not be divided, subdivided or partitioned.
- (iii) No construction shall be allowed.
- (iv) No drilling, surface mining or other extraction of minerals by surface or subsurface methods may occur. No water wells may be drilled.
- (v) No commercial agricultural purposes of any kind will be permitted.
- (vi) No excavating, removal of topsoil, sand, gravel, rock, or other materials or changes in the topography will be allowed.
- (vii) No removal, harvesting, destruction or cutting of native trees, plants or shrubs will be allowed. No planting of non-native trees, plants or shrubs will be allowed. No dumping or storage of any waste or other substances will be permitted, including any deposits caused by erosion or siltation from adjacent property. No activities will be permitted which are detrimental to wildlife habitat preservation.
- (viii) There shall be no alteration or depletion of or extraction from any water bodies on or under the Open Space Restricted Tracts, including groundwater, except as may be required under the Golf Course Management Plan.
- (ix) There shall be no use of insecticides, fungicides, rodenticides, herbicides or other biocides or pesticides.
- (x) No activities will be conducted that are detrimental to drainage, flood control or soil conservation.

If, owing to unforeseen or changed circumstances, any of the uses prohibited in this **Subsection 4.01(b)** are deemed desirable by the mutual agreement of the Parties, they may give written permission for such activities.

(c) Documents . At least thirty (30) days prior to conveyance by Developer to the Nature Conservancy, Developer shall have provided to the City Representative, for City's review and approval and at Developer's sole expense, legible copies of each of the following documents with respect to the Open Space Restricted Tracts:

- (i) a commitment for title insurance committing to insure fee simple title to the Nature Conservancy subject to exceptions and encumbrances therein set forth;
- (ii) legible copies of all exceptions and encumbrances identified in the commitment for title insurance;
- (iii) a survey; and
- (iv) the proposed special warranty deed of conveyance from Developer to the Nature Conservancy.

(d) Review of Documents . City shall review such documents to ensure compliance thereof with the purposes and intent of this Development Agreement. If the City Representative notifies Developer of any objection(s) of City to the form or content of any of such documents, Developer shall cure such objection(s) to the reasonable satisfaction of the City. If the City Representative fails to notify Developer of any reasonable objection(s) within thirty (30) days of receipt of all of the documents required under **Subsection 4.01(c)**, City shall be deemed to have approved the same. The date of conveyance of the Open Space Restricted Tracts may be delayed until Developer has cured City's objection(s), not to exceed a total of sixty (60) days of delay.

(e) Terms of Conveyance . Developer shall convey the Open Space Restricted Tracts as a donation by special warranty deed, subject only to the exceptions and encumbrances approved by City and the Nature Conservancy and the terms set forth in this **Section 4.01**. The conveyance shall require the Nature Conservancy and its assigns to protect the natural habitats of wildlife and plants, preserve open space for scenic enjoyment in keeping with City's adopted public policy concerning acquisition of open space lands and shall limit the uses of the donated property to passive recreational uses.

(f) Mitigation . Developer may reserve from such donation and conveyance the right to use the Open Space Restricted Tracts, or portions thereof, for purposes of satisfying mitigation requirements imposed by any Governmental Authority as a result of Developer's development of the Land, provided that such mitigation requirements:

- (i) do not impose any financial burdens on the Open Space Restricted Tracts or the owner thereof;
- (ii) do not restrict access to any part of the Open Space Restricted Tracts at any time; and
- (iii) do not restrict in any manner the use of the Open Space Restricted Tracts for passive recreational uses.

(g) Tree Preservation Ordinance . No part of the Open Space Restricted Tracts may be used for purposes of mitigation under Section 35-523 of the UDC, or any successor or replacement thereof, or for providing tree preservation credits for any development of the Land.

(h) Minor Corrections to Description of Open Space Restricted Tracts. Portions of the Open Space Restricted Tracts share a common boundary with portions of the Golf Course/Open Space Tracts. At such time as the legal descriptions of the golf courses identified as Tract 1 and Tract 2 in **Article 3** of the Land Use Restrictions may be modified or revised, as provided in the Land Use Restrictions, the legal description of the Open

Space Restricted Tracts shall be likewise modified to reflect the revisions to the common boundary of the Open Space Restricted Tracts and the Golf Course/Open Space Tracts. If Developer shall file for record in the Official Records the Amendment described in the Land Use Restrictions to amend the legal description of the Golf Course/Open Space Tracts, any resulting change to the description of the Open Space Restricted Tracts shall be likewise made by written notice thereof given to the City Representative and to the District Representative. Such revision to the description of the Open Space Restricted Tracts may be made without the approval of City if:

- (i) The corrected descriptions do not reduce the total acreage of the Open Space Restricted Tracts by more than a total of five (5) acres;
- (ii) The written notice provided by Developer to City and to District shall contain Developer's affidavit that such corrected descriptions do not reduce the total acreage of the Open Space Restricted Tracts by more than a total of five (5) acres; and
- (iii) Such notice shall be given prior to the donation of the affected tract(s) to the Nature Conservancy.

Section 4.02. Golf Course/Open Space Tracts .

The Golf Course/Open Space Tracts include three (3) tracts of land which are more particularly described and identified in the Land Use Restrictions as Tract 1, comprising 260.367 acres, more or less, Tract 2, comprising 222.78 acres, more or less, and a third tract, Tract 3, which is comprised of two tracts identified as Tract 3A of 83.03 acres, more or less, and Tract 3B of 114.2 acres, more or less. Tracts 1 and 2 are identified in this Development Agreement as the PGA Golf Course Tracts. The Golf Course/Open Space Tracts shall be conveyed by Developer to District on or before the Hotel Completion Date.

(a) Appraisal . Not later than one hundred twenty (120) days following the Election Date, the Fair Market Value of each of the Golf Course/Open Space Tracts shall have been determined in accordance with this Development Agreement and the procedures set forth in the definition of 'Fair Market Value' in this Development Agreement.

(b) Per Acre Maximum Price . The aggregate of the appraised Fair Market Value of all Golf Course/Open Space Tracts shall be averaged to obtain an average Fair Market Value per acre. Such average Fair Market Value per acre will establish the maximum price per acre which District may pay to Developer for any of the Golf Course/Open Space Tracts notwithstanding (i) any future reconfiguration of any of the tracts comprising the Golf Course/Open Space Tracts in accordance with the Land Use Restrictions or (ii) any subsequent appraisal obtained with respect to any of the tracts comprising the Golf Course/Open Space Tracts.

(c) Cost of Appraisals . Developer shall pay the cost of the services of the appraiser selected by Developer. District shall pay the cost of the services of the appraiser selected by City Council. Developer and District shall each pay one-half (½) of the cost of the services of any appraiser mutually selected by the appraiser selected by City Council and the appraiser selected by Developer.

Section 4.03. Trail Head Tract .

The Trail Head Tract shall be conveyed by Developer to District not later than the Hotel Completion Date subject to the following terms, conditions and requirements:

- (a) Fair Market Value . The Fair Market Value of the Trail Head Tract shall have been determined.
- (b) Documents . Developer shall have provided to the City Representative, for City's review and approval, legible copies of each of the following documents with respect to the Trail Head Tract:
 - (i) a commitment for title insurance in the stated amount of the Fair Market Value, committing to insure fee simple title to District subject to exceptions and encumbrances therein set forth;
 - (ii) legible copies of all exceptions and encumbrances identified in the commitment for title insurance;
 - (iii) a survey; and
 - (iv) the proposed deed of conveyance from Developer to District.
- (c) Review of Documents . City shall have had not less than thirty (30) days to review and approve such documents relating to the Trail Head Tract to ensure compliance thereof with the purposes and intent of this Development Agreement. If the City Representative notifies Developer of any objection(s) of City to the form or content of any such documents, Developer shall cure such objection(s) to the reasonable satisfaction of City. If the City Representative fails to notify Developer of any objection(s) within thirty (30) days of receipt of all of the documents required under **Subsection 4.03(b)**, City shall be deemed to have approved the same. The date of conveyance of the affected tract may be delayed until Developer has cured City's objection(s), not to exceed a total of sixty (60) days of delay.
- (d) Conveyance . Subject to any delay under the preceding subsection, Developer shall have granted and conveyed to District the Trail Head Tract for a purchase price equal to the Fair Market Value thereof, subject only to the exceptions and encumbrances approved by City.

ARTICLE 5. WATER

Section 5.01. Water Contract .

Developer and SAWS have agreed upon the terms of the Water Contract. The Water Contract will be valid and binding upon SAWS and Developer unless and until this Development Agreement is terminated prior to the Hotel Completion Date. Upon such termination, Developer's water rights which existed prior to the Execution Date, if any, shall be reinstated. Developer agrees that the water capacity described in the Water Contract is sufficient for the purposes of the Project reflected in the Development Plan. The provisions of the Water Contract and this ARTICLE 5 shall survive any termination of this Development Agreement after the Hotel Completion Date.

Section 5.02. Assignment .

Developer may convey certain of its rights under the Water Contract to District, as necessary for District to

reimburse water infrastructure costs paid by Developer pursuant to the Reimbursement Agreement, subject to District's assumption and agreement to perform all of the obligations of Developer under the Water Contract; provided, however, notwithstanding such assignment, Developer will not be relieved of such obligations. Any and all such rights may be used only on the Land for purposes consistent with the Development Plan. Reimbursement to Developer shall be subject to TNRCC's "Rules and Regulations for Public Water Systems," as currently promulgated and as same may be hereafter amended, supplemented, restated or superceded and replaced.

Section 5.03. Water Infrastructure .

(a) Construction Obligations of District . Subject to this Development Agreement, District has the authority to purchase and/or construct water distribution facilities within the boundaries of District necessary or desirable for the development of the Land, including without limitation a system of pipes, water mains, laterals, service lines, hydrants, feeders, regulators, fixtures, connections and attachments and other desirable appurtenances necessary or proper for the purposes of transporting, storing, distributing, supplying and selling water for domestic, commercial, municipal and fire protection purposes and for any other purposes for which water may now or hereafter be used, to District and its inhabitants. Construction of all such water distribution facilities shall comply with the Water/ Wastewater Construction Standards in effect at the time of SAWS' written approval of the construction of such facilities. In addition and without limiting the foregoing, District shall construct and, prior to ownership by SAWS, maintain such facilities to comply with the standards for service of the TNRCC's "Rules and Regulations for Public Water Systems," as currently promulgated and as same may be hereafter amended, supplemented, restated or superceded and replaced.

(b) Prior Approval By SAWS . Before the commencement of construction of public water projects and facilities on the Land, District will submit to the Director of ID all plans and specifications therefor and obtain written approval of such plans and specifications by the Director of ID. Upon such approval and prior to the construction of any facilities, District will give written notice to the Director of ID, stating the date on which construction shall commence. All such projects and facilities shall comply with the design, competitive bid, award and construction requirements as applicable to publicly funded improvement projects under Governmental Rules. The procedures set forth in this **Subsection 5.03(b)** are in addition to the standard practices required of developer customers or their agents in conducting business with SAWS.

(c) Existing Water Mains . SAWS shall permit District, if provided in the Water Contract, connections to SAWS existing and/or proposed water mains situated near the boundaries of District at Bulverde Road and Evans Road and other points as may be reasonably necessary for delivery of water to District. District shall bear all cost and expense of such connections and shall be fully responsible to SAWS for any and all damage sustained by the existing water mains as a result of any act or omission of District in connection with the exercise of its rights hereunder to connect to same. SAWS shall be responsible for the continued operation and maintenance of the existing water mains in its service area.

(d) Conveyance of Facilities . The water distribution facilities purchased and/or constructed by District or caused to be constructed by District shall be conveyed to SAWS immediately upon completion of

construction, subject to SAWS's prior inspection and approval of such facilities, in consideration of the agreements of SAWS described in **Section 5.03(f)**. Transfer of the facilities will be by instrument approved by SAWS, free of liens and encumbrances, with a covenant by District that it is the lawful owner and has a lawful right to transfer and deliver unencumbered title in and to such facilities. If SAWS' inspection of the facilities should reveal that same are not in compliance with the Water/Wastewater Construction Standards or otherwise deficient for their intended purposes, prior to approval and acceptance by SAWS, District shall, without undue delay, undertake at its sole cost, such repairs, improvements, replacements and additions as are reasonably necessary to cause such water distribution facilities to comply with the Water/Wastewater Construction Standards and all requirements reasonably imposed by SAWS in connection therewith. Without limiting the foregoing, upon completion of construction, District shall furnish to SAWS a complete set of 'as built' plans, together with an engineer's letter of certification that all facilities were constructed in compliance with the Water/Wastewater Construction Standards and the plans and specifications approved by SAWS.

(e) Additional Facilities . From time to time during the term of this Development Agreement, as the development of the Land continues, District shall acquire or construct such additional water distribution facilities as may be hereafter necessary or desirable for the purposes described in this ARTICLE 5, all of which shall be in compliance with the provisions of this ARTICLE 5. The acquisition or construction of additional water distribution facilities by District is subject to the availability of sufficient funds and subject to the availability of capacity, as limited by the Water Contract.

(f) Maintenance . Following conveyance to SAWS, the operation and maintenance of the water distribution facilities and delivery of water within District will be performed by SAWS pursuant to its standard operating procedures and requirements.

(g) Water Use Accountability . Water Use Accountability Specification No. 906 of the SAWS Standard Specifications for Construction, as amended, superceded or replaced, will be applicable to all construction activities on any part of the Land.

Section 5.04. Water Service .

(a) SAWS Operations . SAWS will be the exclusive purveyor of water services to the Land. SAWS will provide service in accordance with its standard extension policies. All regulations adopted by SAWS concerning delivery of water service, including without limitation deposit requirements and collection of monthly charges for service, will be in full force and effect in the furnishing of services by SAWS under this Development Agreement, except the extent expressly limited by this Development Agreement. Neither District nor Developer shall permit any part of the Land to be included in any certified water service area other than the certified water service area of SAWS.

(b) Rates . SAWS shall be solely responsible for meter reading, billing, and collection within District, and shall collect all revenues therefrom. Water service will be provided to customers in District in substantially the same manner and under the terms, practices, conditions, fees, assessments, tolls and charges as SAWS has

heretofore and may hereafter prescribe for its customers outside the city limits of City under applicable ordinances of City and SAWS's utility service regulations.

Section 5.05. Trinity Wells .

No water will be drawn from the Trinity Wells located within District, and all water servicing the Land shall be provided by SAWS pursuant to the Water Contract. Notwithstanding the foregoing, however, Developer and District may use water from any Trinity Wells for the limited purposes of construction of the Hotel, construction of the golf courses on the PGA Golf Course Tracts (for purposes of compacting and dust control only), and construction of Cibolo Canyon Roadway (as described in Exhibit A) and related infrastructure; provided, however, that all use of water from the Trinity Wells shall cease upon the earlier to occur of (i) the Hotel Completion Date, or (ii) a water pipeline accepted by SAWS is in place to permit delivery of water by SAWS to the Hotel Tract, the PGA Golf Course Tracts and the Cibolo Canyon Roadway. SAWS, District and Developer may use the Trinity Wells for purposes of monitoring water quality under the Golf Course Management Plan.

Section 5.06. Water Conservation Measures .

The Land shall be subject to the requirements imposed by the Aquifer Management Plan Ordinance No. 80574, reflected in the City Code, Chapter 34, Article IV, Divisions 1-4, Sections 287-350, inclusive, and known as the "Critical Period Management Rules." In addition, the Water Provision Agreement specifies certain "Conservation Requirements" which must be observed and performed by Developer with respect to the PGA Complex and any other parts of the Land used for the purposes of a golf course. The Conservation Requirements (a) limit irrigation of the golf courses to ninety (90) acres of land per golf course, (b) require best management practices for golf course irrigation, (c) require irrigation controls based upon actual weather conditions as determined by an on-site weather station and computer controlled irrigation systems, (d) limit irrigation practices to amounts of water actually needed based upon evapotranspiration and (e) require Developer to provide EAA permitted water rights of not less than twice the irrigation requirements for each golf course on the Land to SAWS as a condition to the provision of water service to such golf course. The operation of the golf courses shall be deemed in compliance with Stages I, II and III of the Critical Period Management Rules so long as the operation of the golf courses shall be in compliance with the Conservation Requirements set forth in the Water Provision Agreement and this Development Agreement.

ARTICLE 6. WASTEWATER COLLECTION AND TREATMENT

Section 6.01. Wastewater Capacity Assignment .

Developer may convey certain of its rights under the Sewer Contract to District including Developer's conditional rights to sewer service for a maximum of 4,500 EDUs thereunder, as necessary for District to reimburse sewer infrastructure costs paid by Developer pursuant to a Reimbursement Agreement, subject to the assumption and agreement of District to perform all of the obligations of Developer thereunder. Notwithstanding such assumption, Developer will not be released of such obligations but shall perform the same to the extent that District

fails or is unable to perform the same. This provision shall not prohibit SAWS from providing or assigning any excess or unused capacity in the sewer line system.

Section 6.02. Wastewater Infrastructure .

(a) Construction Obligations . Subject to the terms and conditions of this Development Agreement, District has the authority to purchase and/or construct or cause to be constructed wastewater lines and facilities within or without the boundaries of District necessary or desirable for the development of the Land, including (without limitation) a system of pipes, wastewater mains, laterals, lift stations, man holes, connections or attachments and other desirable appurtenances necessary or proper for the purposes of collecting and transporting wastewater generated within the Land. Public wastewater collection services shall be furnished by SAWS to the inhabitants of the Land in accordance with the Sewer Contract. Construction of wastewater collection facilities shall comply with the Water/Wastewater Construction Standards, in effect at the time of SAWS's written approval of the construction of such facilities. All sanitary sewer improvements constructed on the Land shall comply with the design, competitive bid, award and construction procedures as applicable and as set forth in the Sewer Contract.

(b) Prior Approval by SAWS . Before the commencement of construction of wastewater projects and/or facilities on the Land, District will submit to the Director of ID, or that Director's designated representatives, all plans and specifications therefor and shall obtain approval of such plans and specifications therefrom. District will give prior, written notice to SAWS stating the date on which construction will be commenced.

(c) Existing Collection System . SAWS shall permit District, as provided in the Sewer Contract, to connect to SAWS's existing wastewater mains situated near the boundaries of the Land and other points as SAWS may determine to be reasonably necessary to transfer wastewater from the Land.

(d) Conveyance of Facilities . The wastewater collection facilities purchased and/or constructed by District, or caused to be constructed by District, shall be conveyed to SAWS for and in consideration of the agreements of SAWS pursuant to **Subsection 6.02(e)** below, subject to SAWS's prior inspection and acceptance thereof. Transfer of the facilities will be by instrument approved by SAWS, free of liens and encumbrances, with a covenant by District that it is the lawful owner and has a lawful right to transfer and deliver unencumbered title in and to such facilities. If SAWS's inspection of the facilities should reveal that same are not in compliance with the Water/Wastewater Construction Standards or are otherwise deficient for their intended purposes, prior to conveyance to SAWS, District shall, without undue delay and at its sole expense, undertake to Completion such repairs, improvements, replacements and additions as are necessary to cause such wastewater collection facilities to comply with the Water/Wastewater Construction Standards and all requirements reasonably imposed by SAWS in connection therewith. Without limiting the foregoing, upon completion of construction, District shall furnish to SAWS a complete set of 'as built' plans, together with an engineer's letter of certification that all facilities were constructed in compliance with the Water/Wastewater Construction Standards and the plans and specifications approved by SAWS.

(e) Maintenance . Following approval and acceptance by SAWS, the operation and maintenance of

the wastewater collection system within District will be performed by SAWS pursuant to its standard operating procedures and requirements. In addition, and without limiting the generality of the foregoing, District shall construct and maintain such facilities, prior to acceptance by SAWS, to comply with the Standards for Services of the TNRCC's "Rules and Regulations for Public Water Systems" as currently promulgated and as same may be hereafter amended, supplemented, restated, superceded or replaced.

Section 6.03. Wastewater .

(a) SAWS Operations . SAWS will be the exclusive purveyor of wastewater service to the Land. SAWS will provide service in accordance with the Sewer Contract. All regulations adopted by SAWS concerning delivery of wastewater service, including without limitation deposit requirements and collection of monthly charges for service, will be in full force and effect in the furnishing of services by SAWS under this Development Agreement, except the extent expressly limited by this Development Agreement.

(b) Rates . SAWS shall be solely responsible for meter reading, billing, and collection within District, and shall collect all revenues therefrom. Wastewater service will be provided to customers in District in substantially the same manner and under the terms, practices, conditions, fees, assessments, tolls and charges as SAWS has heretofore and may hereafter prescribe for its customers outside the city limits of City under applicable ordinances of City and SAWS' utility service regulations. District hereby approves same.

ARTICLE 7. GOLF COURSES/ENVIRONMENTAL MANAGEMENT

Section 7.01. Golf Course Management Plan .

The Golf Course Management Plan is hereby adopted by the Parties and shall be applicable to the PGA Golf Course Tracts and any other part of the Land used for the purposes of a golf course, in the form attached hereto and to the Land Use Restrictions. The Golf Course Management Plan establishes the essential parameters for the construction, operation and maintenance of the golf courses and for monitoring of surface water and ground water quality which may be impacted by the golf course(s).

Section 7.02. Construction of Golf Courses .

No construction of any golf course may commence unless the design and construction plan therefor complies with the Golf Course Management Plan. For each golf course to be constructed on the Land, SAWS shall be furnished copies of the final plans and land surveys for the proposed golf course and such additional documentation as SAWS may reasonably request. Not later than forty-five (45) days following receipt of all documentation described in the preceding sentence, SAWS shall either certify in writing that the proposed golf course is in compliance with the requirements of the Golf Course Management Plan or shall have identified in writing the deficiencies which must be addressed prior to commencement of construction of such golf course. Failure by SAWS to identify in writing any deficiencies within such forty-five (45) day period shall be deemed approval by SAWS of the submitted documentation. The approvals required hereunder are in addition to SAWS's review and

approval of each required WPAP.

Section 7.03. Interpretation of Plan .

The Golf Course Management Plan shall be liberally construed in favor of protecting all surface water and ground water from degradation. Certain provisions of this Development Agreement are intended to supplement the Golf Course Management Plan. In the event of any conflict, the stricter provision set forth therein or in this Development Agreement will control and be enforceable.

Section 7.04. Enforcement of Golf Course Management Plan .

City has authorized SAWS to enforce the Golf Course Management Plan, and the Parties agree that (i) until further notice from City to the contrary, SAWS will enforce the Golf Course Management Plan in accordance with its terms and (ii) upon notice from City to Developer and District, City may directly enforce the Golf Course Management Plan in accordance with its terms. District shall not be required to enforce the requirements imposed by the Golf Course Management Plan.

Section 7.05. Expenses of Monitoring Under Golf Course Management Plan .

(a) District Obligation . District shall pay, as Operating and Maintenance Expenses of District, the non-capital expenses of monitoring water uses and water quality which are required pursuant to the Golf Course Management Plan.

(b) Obligation Upon Termination . Upon termination of this Development Agreement, such expenses shall be borne by Developer and its successors in interest to the portions of the Land used as a golf course, as defined and described in the Land Use Restrictions. Notwithstanding the foregoing, the obligation to pay such expenses may be assigned to and fully assumed and performed by any association(s) of property owners of the Land or any part thereof. Upon assumption by any such property owners association(s), Developer and its successors in interest shall be released from the obligation to pay such expenses if (i) such assumption shall be in writing and shall be recorded as a covenant running with the portion of the Land subject to such property owners association(s), and (ii) the financial ability and legal obligation of the property owners association(s) to pay such expenses is approved in writing by the City Representative. The provisions of this **Subsection 7.05(b)** shall survive this Development Agreement so long as such Golf Course Management Plan shall continue in effect with respect to such portions of the Land.

ARTICLE 8. ROADS AND DRAINAGE IMPROVEMENTS

Section 8.01. Road Construction .

To the extent required by the UDC, the Development Plan shall be amended to reflect the location, character and dimensions of each proposed road not presently shown on the Development Plan. All roadways shall require

the submission of a WPAP application in accordance with **Section 2.04.**

Section 8.02. Public Road Maintenance .

(a) Dedication to County . If accepted by the County, all public roads located within District will be maintained by the County until annexation thereof by City. This does not prohibit District and County from entering into an agreement whereby the County may contract with District to provide maintenance of the public roads.

(b) Maintenance by District . In the event that the County declines to accept the public dedication of the public roads located within District, District shall maintain such public roads until such time as City and District may enter into an agreement pursuant to which City shall agree to perform such maintenance obligations of District upon terms and conditions mutually acceptable to City and District. At all times that District retains ownership of the public roads, District shall maintain such roads and improvements in substantially the same condition and repair as existed upon final Completion thereof, subject to reasonable wear and tear.

Section 8.03. Construction Requirements .

Construction of public street and drainage improvements shall comply with the requirements of the UDC and shall be at District's sole cost and expense. District shall provide notice to the Director of Public Works of the date construction commences on such improvements undertaken by District. District agrees that the Director of Public Works, upon reasonable notice, may inspect such construction for the purpose of ascertaining that work complies in material respects with the Development Plan which City has approved, the approved WPAP therefor and other City requirements. However, District shall assume full responsibility for completing construction of such improvements materially in accordance with the Development Plan, the UDC and this Development Agreement.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations of Developer .

Developer hereby makes the following representations, warranties and covenants to and with City and District as of the Execution Date unless another date is expressly stated to apply:

(a) Existence . Developer is a corporation duly incorporated and legally existing under the laws of the State of Delaware, and qualified to transact business in the State of Texas.

(b) Authorization . Developer is duly and legally authorized to enter into this Development Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws to which it may be subject and that the undersigned representative is authorized to act on behalf of and bind Developer to the terms of this Development Agreement. Developer has provided to City and District, on or prior to the Execution Date, a certified copy of a resolution of its Board of Directors authorizing Developer's execution of this Development Agreement through Developer Representative, together with documents evidencing Developer's good standing and authority to transact business in the State of Texas. Developer has all requisite power to perform all of its obligations under this Development Agreement. The execution and performance of this Development Agreement by Developer

does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.

(c) Enforceable Obligations . Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Development Agreement, all documents executed by Developer pursuant hereto and all obligations of Developer hereunder and thereunder are enforceable in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(d) No Legal Bar . The execution and delivery of this Development Agreement and the performance of its obligations hereunder by Developer will not conflict with any provision of any law, regulation or Governmental Rules to which Developer is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Developer is a party or by which it is bound or any order or decree applicable to Developer.

(e) Litigation . Except such matters which have been disclosed in writing to District and to City, there are no legal actions or proceedings pending or, to the knowledge of Developer Representative, threatened against Developer which, if adversely determined, would materially and adversely affect the ability of Developer to fulfill its obligations under this Development Agreement or the financial condition, business or prospects of Developer.

(f) Documents . All documents made available by Developer to City and/or City's agents or representatives and/or to District and/or District's agents or representatives prior to the Execution Date, including without limitation the Hotel Development Agreement, PGA Agreement and all financial documents relating to Developer, are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein.

(g) Hotel Development Agreement . The Hotel Development Agreement will not be terminated or materially amended or modified prior to Hotel Completion Date without notice thereof to City prior to the effective date of such amendment, modification or termination.

(h) Hotel Management Agreement . The Hotel Management Agreement will not be terminated or materially amended or modified, prior to Hotel Completion Date, without notice thereof to City prior to the effective date of such amendment, modification or termination.

(i) PGA Agreement . The PGA Agreement will not be terminated or materially amended or modified without notice describing the nature thereof to City prior to the effective date of such amendment, modification or termination.

(j) Knowledge . Developer has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by Developer or any other Party under this Development Agreement are in any way inaccurate, incomplete or misleading.

(k) Governmental Rules . If acting in the name of or on behalf of District, Developer shall perform such obligations of District in accordance with the terms of this Development Agreement and comply with all

Governmental Rules applicable to District and its operations.

Section 9.02. Representations of District .

District hereby makes the following representations, warranties and covenants to and with City and Developer as of the Election Date:

- (a) Existence . District has been duly created under the Act.
- (b) Authorization . District is duly and legally authorized to enter into this Development Agreement and has complied with all laws, regulations and Governmental Rules to which it may be subject and that the undersigned representative is authorized to act on behalf of and bind District to the terms of this Development Agreement. District has provided to City and District, on or prior to District's execution of this Development Agreement, a certified copy of a resolution of its Board of Directors authorizing District's execution of this Development Agreement through such representative. District has all requisite power to perform all of its obligations under this Development Agreement and the execution and performance of this Development Agreement by District does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.
- (c) Enforceable Obligations . Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Development Agreement, each document executed by District pursuant hereto and all obligations of District hereunder and thereunder are enforceable in accordance with their terms.
- (d) Litigation . Except such matters which have been disclosed in writing to Developer and to City, there are no legal actions or proceedings pending which, if adversely determined, would materially and adversely affect the ability of District to fulfill its obligations under this Development Agreement.
- (e) Knowledge . District has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by District or any other Party under this Development Agreement are in any way inaccurate, incomplete or misleading.

Section 9.03. Representations of City .

City hereby makes the following representations, warranties and covenants to and with Developer and District as of the Execution Date unless another date is expressly stated to apply:

- (a) Existence . City is a municipal corporation and home rule city of the State of Texas principally situated in Bexar County.
- (b) Power and Authority . City has all requisite municipal corporate power and authority to enter into this Development Agreement and perform all of its obligations hereunder. The execution and performance by City of this Development Agreement has been duly authorized by all necessary City Council action and, except for the additional approval of Developer and District, does not require the consent or approval of any other person which has not been obtained, including, without limitation, any Governmental Authority.
- (c) No Legal Bar . The execution and performance by City of this Development Agreement does not

and will not violate any provisions of any contract, agreement, instrument or Governmental Rule to which City is a party or is subject.

(d) Litigation . Except such matters which have been disclosed in writing to Developer and to District, there are no legal actions or proceedings pending known to City Representative which, if adversely determined, would materially and adversely affect the ability of City to fulfill its obligations under this Development Agreement.

(e) Enforceable Obligations . Assuming (i) due authorization, execution and delivery by each party hereto and thereto, and (ii) the occurrence of the Confirmation Election in accordance with **Subsection 1.03(b)**, this Development Agreement, each document executed by City pursuant hereto and all obligations of City hereunder and thereunder are enforceable in accordance with their terms.

Section 9.04. Disclaimer of City .

DEVELOPER AND DISTRICT ACKNOWLEDGE THAT, EXCEPT FOR CITY'S REPRESENTATIONS CONTAINED WITHIN THIS DEVELOPMENT AGREEMENT, NEITHER CITY NOR ANY AFFILIATE OF CITY NOR ANY RELATED PARTY OF CITY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE PROJECT, THE SUBJECT MATTER OF THIS DEVELOPMENT AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS DEVELOPMENT AGREEMENT. DEVELOPER AND DISTRICT AGREE THAT NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING (COLLECTIVELY, THE "DEVELOPMENT RISKS"):

(a) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN CITY'S REPRESENTATIONS UNDER THIS DEVELOPMENT AGREEMENT;

(b) THE COMPLIANCE OF THE PROJECT, THE DEVELOPMENT PLAN OR ANY FEATURE THEREOF AND ANY PROPOSED IMPROVEMENT WITH ANY GOVERNMENTAL RULE; OR

(c) THE ACCURACY OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, DEVELOPMENT SCHEDULES OR OTHER MATTERS RELATING TO THE PROJECT OR ANY PUBLIC IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED BY DEVELOPER OR DISTRICT UNDER THE TERMS OF THIS DEVELOPMENT AGREEMENT.

NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN CITY) UNDER THIS DEVELOPMENT AGREEMENT (INCLUDING WITHOUT LIMITATION ANY DOCUMENT APPENDED AS AN EXHIBIT TO THIS DEVELOPMENT AGREEMENT) TO PERFORM THEIR RESPECTIVE OBLIGATIONS THEREUNDER. IT IS UNDERSTOOD AND AGREED BY DEVELOPER AND DISTRICT (RESPECTIVELY AND FOR ANY PERSON CLAIMING BY, THROUGH OR UNDER EACH OF THEM) THAT EACH OF THEM HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO THE LAND, THE PROJECT, THE PUBLIC IMPROVEMENTS AND THE DEVELOPMENT PLAN.

Section 9.05. Reliance .

Each Party recognizes and acknowledges that, in entering into this Development Agreement, (i) all Parties are expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of each Party without any obligation to investigate the accuracy or completeness of such representations and covenants, and notwithstanding any investigation thereof by any Party, that such reliance exists on the part of each Party prior to the Execution Date and thereafter until this Development Agreement is or shall be terminated according to its terms; (ii) such representations and covenants are a material inducement to each Party in making this Development Agreement and agreeing to undertake and accept its terms, and (iii) each Party would not be willing to do so in the absence of any of such representations and covenants.

Section 9.06. Covenants of Developer and District .

(a) Covenants of Developer . Developer covenants and agrees:

(i) Golf Course Management Plan. Developer shall observe and perform, or cause to be observed and performed, each of the obligations and requirements of the Golf Course Management Plan. The Golf Course Management Plan imposes requirements reasonably required and designed to protect surface and groundwater resources. Developer confirms that SAWS has and shall exercise the powers of enforcement and authority described in the Golf Course Management Plan.

(ii) Open Space Restricted Tracts. Developer shall not encumber, sell, lease or otherwise divest itself of any interest in any part of the Open Space Restricted Tracts, other than to donate and convey the Open Space Restricted Tracts in accordance with this Development Agreement, and shall preserve and protect the Open Space Restricted Tracts until conveyance thereof, in accordance with the requirements and limitations set forth in the **Section 4.01** hereof.

(iii) Trail Head Tract. Developer shall not encumber, sell, lease or otherwise divest itself of any interest in any part of the Trail Head Tract, other than to convey such tract to District in accordance with this Development Agreement, and shall preserve, protect and maintain such tract until such conveyance thereof to District.

(iv) INDEMNIFICATION BY DEVELOPER DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND THE ELECTED OFFICIALS, MEMBERS, AGENTS, EMPLOYEES, OFFICERS DIRECTORS AND REPRESENTATIVES OF CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S ACTIVITIES UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE,

DEVELOPER'S EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS DEVELOPMENT AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF CITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY OR DEVELOPER KNOWN TO DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES RELATED TO THIS DEVELOPMENT AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S EXPENSE. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION.

(v) Waiver of Subrogation: With respect to any policies of insurance which may be required to be provided by Developer in connection with this Development Agreement or the construction of the Public Improvements, Developer waives any subrogation rights against City with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from (i) any risks insured against under any valid collectible insurance contract or policy carried by Developer in force at the time of any such injury and/or damage giving rise to such claim or (ii) any risk that would be covered under any insurance required to be obtained and maintained by Developer under or pursuant to this Development Agreement, even if such required insurance is not in fact obtained and maintained. This waiver of subrogation is not intended to limit the claims of Developer or City to the face amount or coverage of such insurance policies.

(vi) Waiver of Consequential Damages. Developer waives all present and future claims for consequential damages against City arising from or related to this Development Agreement, and such waiver shall survive any termination of this Development Agreement.

(vii) Release of Existing Claims. Developer hereby releases any and all claims of every kind or character which Developer may have under or pursuant to this Development Agreement against City and its elected officials, members, agents, employees, officers, directors, shareholders and representatives, individually and collectively.

(b) Covenants of District. District covenants and agrees to and with each Party hereto:

(i) Golf Course Management Plan. To the extent that the Golf Course Management Plan is applicable to District's property, District shall observe and perform, or cause to be observed and performed, each of the obligations and requirements of the Golf Course Management Plan. District confirms that SAWS has and shall exercise the powers of enforcement and authority described in the Golf Course Management Plan.

(ii) No Condemnation of Open Space. District shall not take any action to condemn for any purpose any of the Land which is and which will be Open Space in accordance with this Development Agreement, including without limitation, the Open Space Restricted Tracts, the Golf Course/Open Space Tracts or the PGA Golf

Course Tracts.

(iii) No Transfer of Utility System. District shall not sell or transfer its utility systems to a public utility other than SAWS or to any private utility, nor transfer any rights under this Development Agreement to any other person or entity without the approval of City Council.

(iv) Waiver of Subrogation: With respect to any policies of insurance which may be required to be provided by District in connection with this Development Agreement or the construction of the Public Improvements, District waives any subrogation rights against City with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from (i) any risks insured against under any valid collectible insurance contract or policy carried by District in force at the time of any such injury and/or damage giving rise to such claim or (ii) any risk that would be covered under any insurance required to be obtained and maintained by District under or pursuant to this Development Agreement, even if such required insurance is not in fact obtained and maintained. This waiver of subrogation is not intended to limit the claims of District or City to the face amount or coverage of such insurance policies.

ARTICLE 10. FINANCING

Section 10.01. Preliminary Funding .

Until Bonds may be issued or Revenues collected by District, District will have insufficient liquidity to perform its obligations under this Development Agreement or to pay Operating and Maintenance Expenses. Developer agrees to either (i) provide to District all necessary funding for this Development Agreement and the obligations of District under this Development Agreement or (ii) to undertake and perform the obligations of District under this Development Agreement in District's behalf, all pursuant to the Reimbursement Agreement.

Section 10.02. Plan of Financing .

Pursuant to the Act, District has the right to incur, from time to time, contractual obligations of indebtedness, including the issuance of Bonds, to fund Public Improvements and to provide for the payment or repayment of the costs and expenses of the initial establishment and administration of District and professional services in connection with the issuance of Bonds. District agrees to restrict the purposes for which District may incur indebtedness to those purposes set forth in **Section 10.03**, and District also agrees that all indebtedness incurred by District shall comply with the covenants and conditions set forth in this ARTICLE 10. District shall obtain the prior, written approval of City Council for any indebtedness to be incurred by District which is not expressly authorized under the terms of this ARTICLE 10. District may incur indebtedness as described herein in the form of Senior Bonds, Subordinate Bonds, Inferior Debt and Reimbursement Agreements.

Section 10.03. Approved Purposes .

Unless otherwise approved by City Council, Bonds and Inferior Debt may be incurred by District only to provide funds for the following purposes:

- (a) Organizational Expenses . To finance costs and expenses necessarily incurred in the initial establishment and initial administration of District subject to the limitations set forth in 30 TAC §293.44.
- (b) Existing Water and Sewer Improvements . To acquire from Developer the existing water and sewer improvements, being the general benefit facilities and phases 1A, 1B-1, 1B-2, 1C, 2, 3 and 5, of the North East Quad Waterline Project and the Steubing North Sanitary Sewer Outfall's first phase of off-site sanitary sewer line improvements, by paying the audited construction costs and fees therefor.
- (c) Public Improvements . To purchase and/or construct, or to purchase and/or construct under contract with Developer or otherwise acquire, the Public Improvements, including professional, design and engineering costs related thereto.
- (d) Golf Course/Open Space Tracts . To acquire the Golf Course/Open Space Tracts from Developer in accordance with **Section 4.02**.
- (e) Bond Related Costs . To pay any capitalized interest and the costs necessarily incurred in issuance of the Bonds and Inferior Debt.

It is expressly understood, however, that the Existing Water and Sewer Improvements described in **Subsection 10.03(b)** and the acquisition of the Golf Course/Open Space Tracts described in **Subsection 10.03(d)** may not be financed with the proceeds of Bonds. Bonds shall require the approval of the TNRCC in compliance with 30 TAC §§293.41 - 293.61 (as now in effect or as hereafter amended), as applicable to the Public Improvements financed by the issuance of such Bonds.

Section 10.04. General Limitations on Bonds .

- (a) Time of Issuance : No Bonds may be issued until the Hotel Completion Date.
- (b) Voter Approval . The qualified voters of District shall approve the issuance of the Bonds and the Inferior Debt in an election initiated or ordered by District for such purpose.
- (c) Optional Redemption Provisions . The Bonds shall be subject to optional redemption on any date not later than the tenth (10th) anniversary of the issuance date of the subject Bonds at a price equal to the par value of the Bonds plus premium, if any, determined to be necessary at the time of issuance to obtain the best interest rate, and accrued interest to the redemption date.
- (d) Extraordinary Redemption Revisions . The Bonds shall be subject to extraordinary optional redemption at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, plus premium at a price not to exceed 105% of the par amount of the Bonds to be redeemed. Such extraordinary optional redemption may be exercised by City at any time prior to the tenth (10th) anniversary date after the issuance of the Bonds but no earlier than the seventh (7th) anniversary date of the Hotel Completion Date, if City elects to annex the Land prior to Discharge of the Bonds.
- (e) Method of Sale . The Bonds, at the option of District, may be sold pursuant to a competitive sale, negotiated sale, private placement or any combination thereof.
- (f) Interest Rate . The net effective interest rate on Bonds, taking into account any discount or

sale premium as well as the interest rate borne by such Bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "25 Revenue Bond Buyer's Index" during the one month period next preceding the date District adopts its resolution authorizing the issuance of Bonds.

(g) Payment Dates . Interest on all Bonds shall be payable semiannually and principal of all Bonds shall be payable semiannually or annually on February 15 and/or August 15 of each calendar year.

(h) Maturity . All Bonds shall mature no later than the Stated Termination Date.

Section 10.05. Authorized Debt Obligations of District .

(a) Senior Bonds . Senior Bonds may be issued by District for Public Improvements only if such Senior Bonds comply with the requirements set forth in this **Subsection 10.05(a)** and otherwise comply with this ARTICLE 10.

(i) Initial Issue of Senior Bonds. For the initial issuance of Senior Bonds, District's Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive pro forma financial analysis to the effect that, based upon information received from various sources by the Fiscal Consultant, that (i) District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years and (2) such estimated Revenues, calculated at growth rates consistent with comparable City models, to be received by District are projected to be at least equal to 1.25 times the average Annual Debt Service Requirements of such Senior Bonds through the final maturity thereof.

(ii) Additional Senior Bonds. For each subsequent issue of Senior Bonds:

(1) An independent certified public accountant, or independent firm of certified public accountants, acting by and through a certified public accountant, shall execute and deliver to District, Developer and City a written certificate to the effect that, during the next preceding Fiscal Year, the Revenues were (A) at least 1.25 times an amount equal to the average Annual Debt Service Requirements of all Senior Bonds and (B) at least 1.10 times an amount equal to the average Annual Debt Service Requirements on all Bonds then issued and outstanding during such Fiscal Years; and

(2) The Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive pro forma financial analysis to the effect that, based upon the information received from various sources by such Fiscal Consultant, District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years and such estimated Revenues, calculated at growth rates consistent with comparable City models or at historical trends not to exceed five percent (5%), will be (A) at least equal to 1.25 times an amount equal to the average Annual Debt Service Requirements of all Senior Bonds (including, without limitation, the subject Senior Bonds) for such next succeeding Fiscal Years and (B) at least equal to 1.10 times an amount equal to the average Annual Debt Service Requirements of all Bonds, including the Senior Bonds proposed to be issued, during such next succeeding Fiscal Years. If there has been any increase in the rates or charges, which is then in effect, but which was not in effect during all or any part of the period for calculation, the above referenced

comprehensive pro forma financial analysis may include the financial benefit rated to the increase in the rate or charges.

(b) Subordinate Bonds . Subordinate Bonds may be issued for an authorized purpose only if such Subordinate Bonds comply with the requirements set forth in this **Subsection 10.05(b)** and otherwise comply with this ARTICLE 10.

(i) Initial Issue of Subordinate Bonds. For the initial issuance of Subordinate Bonds, District's Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive pro forma financial analysis to the effect that, based upon the information received from various sources by the Fiscal Consultant, (i) District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years, and (ii) the projected Revenues, as defined and described in **Subsection 10.05(a)(i)**, estimated to be received by District on the Senior Bonds will be at least equal to 1.25 times the average Annual Debt Service Requirements, and on the Subordinate Bonds, will be at least equal to 1.10 times the average Annual Debt Service Requirements of all Bonds.

(ii) Additional Subordinate Bonds. For each subsequent issue of Subordinate Bonds:

(1) An independent certified public accountant, or independent firm of certified public accountants, acting by and through a certified public accountant, shall execute and deliver to District, Developer and City a written certificate to the effect that, during the next preceding Fiscal Year, the Revenues, as defined and described in **Subsection 10.05(a)(i)**, were at least 1.10 times an amount equal to the average Annual Debt Service Requirements of the all Bonds during such preceding Fiscal Year; and

(2) The Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive pro forma financial analysis for City to the effect that, based upon the information received from various sources by the Fiscal Consultant, (A) District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years and (B) such estimated Revenues, calculated at growth rates consistent with comparable City models or at historical trends not to exceed five percent (5%), on the Senior Bonds will be at least equal to 1.25 times the average Annual Debt Service Requirements of all Senior Bonds for such next succeeding Fiscal Years and at least equal to 1.10 times the average Annual Debt Service Requirements of all Bonds during such next succeeding Fiscal Years. If there has been any increase in the rates or charges, which is then in effect, but which was not in effect during all or any part of the period for calculation, the above referenced comprehensive pro forma financial analysis may include the financial benefit rated to the increase in the rate or charges.

(c) Inferior Debt . District may privately place any forms of indebtedness solely with Developer, which will not be required to meet or comply with any historical and/or projected additional bonds test.

(d) Reimbursement Agreement . District may enter into Reimbursement Agreement(s) with Developer for an authorized purpose in accordance with **Section 10.03** and for Operation and Maintenance Expenses, pursuant to which Developer advances funds to District. Such Reimbursement Agreement(s) are authorized by this Development Agreement only to the extent that such Reimbursement Agreement(s) comply with the requirements set

forth in this **Subsection 10.05(d)** and otherwise comply with this ARTICLE 10.

(i) Prohibition on Compounded Interest. The obligation of District to reimburse or pay to Developer interest will be limited to the payment of accrued interest on funds advanced by Developer and shall not include any obligation by District to reimburse or pay to Developer compounded interest on such advances.

(ii) Extinguishment of Obligation. All Inferior Debt, Reimbursement Agreements and other obligations of District to Developer shall terminate as of the date on which this Development Agreement terminates, whether on the Stated Termination Date or upon any the exercise by City of any right to terminate this Development Agreement under ARTICLE 14 hereof, and shall be fully canceled as of such date.

Section 10.06. Priority of Uses of Revenues .

All documents authorizing or evidencing Bonds, Inferior Debt or Reimbursement Agreements shall include covenants which establish the priority of application of Revenues of District in each Fiscal Year as follows:

(a) Senior Bonds . First to payment of the Annual Debt Service Requirements of all issues of Senior Bonds during such Fiscal Year and all other payments to come due on all Senior Bonds in such Fiscal Year.

(b) Subordinate Bonds . Second to payment of the Annual Debt Service Requirements of all issues of Subordinate Bonds during such Fiscal Year and all other payments to come due on all Subordinate Bonds in such Fiscal Year.

(c) Operating and Maintenance Expenses . Third to payment of all necessary and reasonable Operating and Maintenance Expenses.

(d) Inferior Debt . Fourth to payment of the Annual Debt Service Requirements of all issues of Inferior Debt during such Fiscal Year and all other payments to come due on all Inferior Debt in such Fiscal Year.

(e) Reimbursement Agreement(s) . Fifth to payment of the current payment obligations of District under Reimbursement Agreements as described in **Subsection 10.05(d)** above.

Section 10.07. Allocation of Revenues; Required Pledge of Ad Valorem Taxes .

District may pledge all or any portion of the Revenues to any series of Bonds in its discretion so long as the limitations in **Sections 10.04** and **10.05** are met; provided, however, that ad valorem taxes, without legal limitation as to rate or amount, shall be pledged to all Bonds.

Section 10.08. Amount of Tax Levied .

At all times, District shall levy ad valorem taxes, hotel occupancy taxes and sales taxes at rates at least equal to City rates for such taxes, unless prohibited by law; provided, however, District may grant partial tax abatements applicable to the Hotel and/or any other hotel(s) constructed on the Land, if such abatements:

- (a) do not extend beyond the Stated Termination Date;
- (b) are terminable by City upon annexation of the Land without obligation of any kind; and
- (c) are granted for the sole purpose of achieving compliance with the employment and wage

requirements set forth in **Section 1.05**.

ARTICLE 11. DISTRICT OPERATIONS

Section 11.01. Assessment and Collection of Taxes and Fees .

Taxes and fees for the payment of District's obligations described in ARTICLE 10 shall be assessed, levied, and collected as follows:

(a) Hotel Occupancy Tax. District shall require hotels located within District to be responsible for the collection of all hotel occupancy taxes levied by District as described in Chapter 351, Texas Tax Code as if District were a municipality. Each hotel shall be responsible for the remittance of such hotel occupancy tax to the proper recipients. Each hotel shall remit the portion of the hotel occupancy tax allocated to District directly to District and shall remit those portions of the hotel occupancy tax allocated to the State and the County to their respective recipients.

(b) Sales and Use Tax. District shall require retailers operating within District to collect sales and use taxes levied by District and shall remit such collected taxes to the State Comptroller in accordance with state law.

(c) Ad Valorem Tax. The assessment of the Land and other taxable property in District shall be conducted by the Bexar County Appraisal District. District shall levy and shall be responsible for the collection of the ad valorem taxes levied by District on taxable property within District.

(d) Assessments. District may require property owners to pay special assessments to District after complying with all legal requirements.

(e) Impact Fees. District may establish, charge, and collect impact fees payable to District in addition to, but not in lieu of, the impact fees to be paid to City in accordance with the UDC or this Development Agreement and to be paid to SAWS in accordance with the Water Contract, the Sewer Contract or this Development Agreement.

Section 11.02. Annual Budget .

Not less than thirty (30) days prior to adoption of any annual budget by its Board of Directors, District shall provide to City Representative a copy of District's proposed annual budget and the date on which it is to be adopted. The proposed annual budget shall be in accordance with Governmental Rules and shall set forth the anticipated Revenues and other income of District and the Operating and Maintenance Expenses, the Annual Debt Service Requirements, the amounts necessary to pay the Inferior Debt, the amounts payable under any Reimbursement Agreement(s) and all other anticipated expenses. Any comments by City concerning the proposed budget shall be transmitted in writing to District Representative not less than ten (10) days prior to the adoption of the budget.

Section 11.03. Construction Covenants for Certain Public Improvements .

District covenants and agrees that all construction undertaken by or on behalf of District with respect to the

Public Improvements, other than water and wastewater projects covered by ARTICLE 5 and ARTICLE 6 of this Development Agreement, will be in accordance with the approvals required under this Development Agreement and the applicable standards and specifications of City. Prior to the construction of such Public Improvements, District shall give written notice to the City Representative and to the Director of Public Works, stating the date that such construction will be commenced. During the progress of the construction and installation of such Public Improvements, the Director of Public Works may make periodic on-the-ground inspections.

Section 11.04. Certain Reimbursement Obligations of District .

(a) District Not Liable . District shall not have any duty to Developer to ensure that there are sufficient Revenues for reimbursement to Developer, other than District's customary activities to collect Revenues, and District shall have no liability to Developer of any kind if there are insufficient Revenues for reimbursement.

(b) Restrictions on Reimbursement . District shall not reimburse Developer except as expressly authorized by this Development Agreement. Without limiting the generality of the foregoing,

(i) District shall not reimburse Developer for any Public Improvement(s) which were not built in compliance with the design, competitive bid, award, contracting and construction requirements described in **Section 3.04** hereof.

(ii) District shall withhold any further reimbursement to Developer if District is notified in writing by the City Representative that the requirements of **Section 1.05** hereof are not being observed; District shall resume reimbursement payments only if District is notified in writing by the City Representative that the operations of the Hotel (and each other hotel located on the Land) are in compliance with **Section 1.05** hereof.

(c) Recovery from Developer . District shall seek to recover from Developer any amounts paid in reimbursement to Developer not permitted to be paid under the terms of this Development Agreement.

Section 11.05. Expansion of District .

The Act provides that District may expand the territory subject to District's jurisdiction with City's consent. Notwithstanding such provision, District shall not at any time seek to add land to its jurisdiction, whether or not such additional land is contiguous to the Land. District shall support and cooperate with City's efforts to secure an amendment to the Act by the Texas Legislature which would eliminate District's ability to expand the territory of District.

Section 11.06. Scope of Authority to Provide Power Service .

District's authority to plan, design, construct, improve and maintain power facilities or services is limited to those facilities and services necessary to provide back-up or auxiliary power to critical functions of District's water or wastewater operations. District shall not provide retail or wholesale electric energy service or electric distribution service to District residents or others. District shall not, whether acting on its own behalf or through any other intermediaries or agents, utilize any authority it may have to plan, design, construct, improve or maintain power

facilities or services to provide retail or wholesale electric energy service or electric distribution service to inhabitants of the Land or others within District's jurisdiction or otherwise. Notwithstanding the foregoing, District may undertake or authorize electric infrastructure improvements of the type and nature traditionally within the scope of a real estate developer's responsibility.

Section 11.07. Enforcement of City Ordinances .

Notwithstanding any authorization given to District under the Act to enforce certain City ordinances, District shall not undertake such enforcement so long as City shall continue to enforce such ordinances.

Section 11.08. Board of Directors of District .

The City Council shall select, from time to time, one (1) person to attend all regular and special meetings of District's Board of Directors. The City Representative shall provide written notice to District of the name and address of the person selected by the City Council for this purpose, and District shall provide to such person notice of all regular and special meetings of District's Board of Directors, and such selected person shall be permitted to attend all regular and special meetings of District's Board of Directors, including meetings which are not open to the general public.

ARTICLE 12. SUBDISTRICTS

Section 12.01. Timing .

District shall be permitted to divide itself into two or more Subdistricts pursuant to and in accordance with this ARTICLE 12, subject to the prior approval of City Council. District shall determine when and if to divide into one or more Subdistricts based on its need, in its discretion. District, upon deciding that the creation of a Subdistrict is required, shall provide a "Notice of Intent to Subdivide" to City, which shall include:

- (a) reference to this Development Agreement;
- (b) a description of the circumstances supporting District's desire to divide into Subdistricts;
- (c) a description of the proposed division of District into the particular Subdistricts; and
- (d) the proposed respective allocations of debt and other obligations among the Subdistricts.

Section 12.02. Allocation of Debt and Property .

Upon the creation by District of two or more Subdistricts by division of District, each Subdistrict shall be governed by the terms of this Development Agreement. Each Subdistrict shall be responsible for its proportionate share of debt and other obligations related to the costs of the infrastructure and development of District as a whole as set forth in the Notice of Intent to Subdivide, or as otherwise agreed by City and District, as applicable.

ARTICLE 13. ANNEXATION

Section 13.01. Timing .

City agrees to defer the exercise of its authority to annex the Land for a period of time ending on the earlier to occur of (a) seven (7) years from January 2 of the year following the Hotel Completion Date, or (b) termination of this Development Agreement for any reason other than a default hereunder by City. At such time as City may annex the Land under the terms of the preceding sentence and elects to do so, City may defease the Bonds, or if the Bonds are then subject to optional redemption, redeem the Bonds upon such annexation.

Section 13.02. Notice .

City shall provide written notice to Developer and District of its intent to annex the Land in accordance with applicable law, subject to **Section 13.04**.

Section 13.03. Effect of Annexation of the Land .

Upon annexation of the Land by City,

- (a) this Development Agreement will terminate;
- (b) District shall cease to exist and all remaining property of District (including all receivables) will pass to and become the property of City without charge or lien, except with respect to any outstanding Bonds, Inferior Debt and Reimbursement Agreements which survive such annexation in accordance with this **Section 13.03**;
- (c) the outstanding and unpaid Bonds will become obligations of City;
- (d) if annexation of the Land occurs after the Stated Termination Date or if annexation follows a termination of this Development Agreement caused by a default by Developer or a Termination Event under **Section 14.01**, all Inferior Debt and Reimbursement Agreements shall not become the obligations of City and shall be canceled; and
- (e) if annexation of the Land results from City's exercise of its rights to annex the Land following the seventh (7th) anniversary of the Hotel Completion Date and if this Development Agreement has not been otherwise terminated by the occurrence of the Stated Termination Date, a default by Developer or a Termination Event under **Section 14.01**, all Inferior Debt and Reimbursement Agreements shall become the obligations of City.

The provisions hereof shall survive termination of this Development Agreement.

Section 13.04. Voluntary Annexation .

District and Developer consent to annexation of the Land by City upon any termination of this Development Agreement for any reason other than a default by City. Should such termination occur, City may undertake such annexation without further notice to or consent by District or Developer, each of which hereby irrevocably waives, for itself and its successors and assigns, any and all legal requirements applicable to such annexation to the fullest extent permitted by law; provided, however, Developer does not thereby waive any vested development rights it has or may have with respect to the Land. Developer and District agree to execute any and all documents reasonably requested by City to evidence such waivers. The provisions hereof shall survive any such termination of this

Development Agreement.

Section 13.05. Release of Reimbursement Rights by Developer .

Upon termination of this Development Agreement due to a Termination Event under **Section 14.01** resulting from the act or omission of Developer or District, Developer hereby irrevocably waives, relinquishes and fully releases any and all right of payment or reimbursement from City authorized by contract or by law, including (without implied limitation) the rights described in Section 43.0715, Texas Local Government Code. Upon termination of this Development Agreement due to a Termination Event under **Section 14.01** resulting from the act or omission of Developer, Developer hereby irrevocably waives, relinquishes and fully releases any and all right of payment or reimbursement from District. The provisions hereof shall survive any such termination of this Development Agreement.

ARTICLE 14. TERMINATION EVENTS, BREACH, AND REMEDIES

Section 14.01. Termination Events .

The Parties acknowledge that certain obligations and requirements of this Development Agreement are of fundamental importance to the certain Parties, such that the breach thereof justifies the termination of this Development Agreement. The occurrence of an Automatic Termination Event, as identified in **Subsection 14.01(a)**, will result in the automatic termination of this Development Agreement. The occurrence of a Termination Event which gives rise to the option of a Party to terminate this Development Agreement, as identified in **Subsections 14.01(b), 14.01(c) and 14.01(d)** below, will result in the termination of this Development Agreement on the thirtieth (30th) day following notice by such Party to each other Party, given in accordance with **Section 17.01** of this Agreement, that the remedy of termination of this Development Agreement has been elected by such Party, unless such Termination Event, if capable of being cured, is cured to the reasonable satisfaction of the Party giving such notice of termination within such thirty (30) day period. If such curable Termination Event cannot reasonably be cured within such 30-day period, the defaulting Party must initiate efforts to cure such Termination Event within such thirty (30) day period and diligently and continuously pursue its efforts to cure such Termination Event thereafter until such cure is accomplished, not to exceed a total of one hundred twenty (120) days. If such cure is not accomplished within said one hundred twenty (120) day period, this Development Agreement will terminate. The Parties agree that the following events are Termination Events for the purposes of this Development Agreement:

(a) Automatic Termination Events .

- (i) If held, the Confirmation Election fails to confirm the establishment of District in accordance with the Act.
- (ii) The entry of a non-appealable ruling by a court of competent jurisdiction that District is terminated, was not formed according to law, or any action of District is beyond the authority conferred upon District by any applicable Governmental Rules.

(b) Termination Events at the Option of any Party .

(i) Failure of District to hold the Confirmation Election on or before September 14, 2002, unless (1) such failure is due to the filing of a legal proceeding which restrains or enjoins the holding of such election, (2) such legal proceeding is diligently contested by District and (3) such legal proceeding results in a final, non-appealable judgment which permits the Confirmation Election to be held not later than December 31, 2004.

(ii) The filing of any legal proceeding to contest the validity of the creation of District, any matter affecting the Confirmation Election, or the validity or enforceability of this Development Agreement, which proceeding is either (1) concluded by a final non-appealable determination adverse to District, or (2) not concluded on or before a date which would permit the Confirmation Election to be held before December 31, 2004.

(c) Termination at Option of City . City may elect to terminate this Development Agreement upon any of the following events upon notice to Developer and District:

- (i) At any time prior to the Confirmation Election.
- (ii) Any of the Milestones has not occurred according to the terms, conditions and timing applicable to such Milestone.
- (iii) Failure of Developer to convey to the Nature Conservancy the Open Space Restricted Tracts on or before the Hotel Completion Date and in compliance with the terms of **Section 4.01** hereof.
- (iv) Failure of Developer to convey to District the Trail Head Tract on or before the Hotel Completion Date, in accordance with **Section 4.03** hereof.
- (v) Failure of City to receive the leasehold described in the Trail Head Lease in accordance with this Development Agreement.
- (vi) Use by Developer or District (including permission granted to any third party for such use) of the Trinity Wells in any manner not expressly authorized by this Development Agreement.
- (vii) Use by Developer of the Open Space Restricted Tracts in breach of the prohibited uses set forth in **Subsection 4.01(b)** hereof.
- (viii) A breach of the Golf Course Management Plan which authorizes City's termination of this Development Agreement, according to the terms of such Golf Course Management Plan.
- (ix) Failure by District or Developer to undertake, perform and Complete the Public Improvements in accordance with ARTICLE 3 of this Development Agreement and substantially in accordance with the Development Schedule, for any reason other than a Force Majeure Event or fault of City.
- (x) Failure by Developer or District, as applicable, to deliver to City or to SAWS any Letter of Credit or replacement Letter of Credit required to be provided under this Development Agreement or the Golf Course Management Plan on a timely basis.
- (xi) A condemnation action undertaken by District with respect to all or any portion of the Open Space Restricted Tracts, any portion of the Golf Course/Open Space Tracts not used for the purposes of a golf course in accordance with the Land Use Restrictions or the Trail Head Tract.
- (xii) District shall reimburse Developer in breach of the terms of this Development Agreement.
- (xiii) District shall issue Bonds or Inferior Debt in breach of **Section 10.03**.

- (xiv) A transfer by Developer in breach of **Section 15.03**.
- (xv) Failure of Developer to deliver leased water rights in accordance with Water Provision Agreement.
- (xvi) Failure of Developer to deliver purchased water rights in accordance with Water Provision Agreement.
- (d) Termination at Option of Developer. Developer may terminate this Development Agreement at any time prior to Hotel Completion Date.

Section 14.02. Effect of Termination Under Section 14.01.

Upon the termination of this Development Agreement upon any Termination Event described in **Section 14.01** above,

- (a) This Development Agreement shall terminate in all respects other than with respect to those matters which survive termination as expressly stated in this Development Agreement.
- (b) City may draw under each Letter of Credit (or any replacement thereof) in accordance with this Development Agreement, if issued.
- (c) All Inferior Bonds and Reimbursement Agreements and all other reimbursement rights of Developer will be canceled.
- (e) Each Party will have the right to pursue all other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

No remedy stated herein is an exclusive remedy and pursuit of any remedy is not an election of remedies precluding the availability of any other remedy. No failure to exercise any remedy hereunder will effect a waiver of such remedy.

Section 14.03. Material Breach of Development Agreement .

- (a) Breach by City . A material breach of this Development Agreement by City (other than a Termination Event) shall occur in the following instances upon thirty (30) days' notice from Developer's Representative or from District's Representative of such breach; provided, however, that if such breach cannot reasonably be cured within such thirty (30) day period, then no breach shall occur unless City fails to commence efforts reasonably calculated to effect such cure within such thirty (30) day period and fails to cure such breach within forty-five (45) days after the initial notice of such material breach (notwithstanding City's diligent prosecution of its curative efforts), exclusive of a Force Majeure Event:
 - (i) the imposition or attempted imposition of any moratorium on building or growth within District which is not otherwise authorized under the terms of this Development Agreement;
 - (ii) an attempt by City to annex the Land prior to the time when annexation is permitted under this Development Agreement;
 - (iii) the condemnation of any part of the Land; or

(iv) the failure by City to substantially perform or substantially observe any of the obligations, covenants and agreements to be performed or observed by City under this Development Agreement. unless prevented by an unreasonable action of Developer or District.

(b) Breach by Developer . A material breach of this Development Agreement by Developer (other than a Termination Event) shall occur in the following instances upon thirty (30) days' notice from City's Representative or from District's Representative of such breach; provided, however, that if such breach cannot reasonably be cured within such thirty (30) day period, then no breach shall occur unless Developer fails to commence efforts reasonably calculated to effect such cure within such thirty (30) day period and fails to cure such breach within forty-five (45) days after the initial notice of such material breach (notwithstanding Developer's diligent prosecution of its curative efforts), exclusive of a Force Majeure Event:

(i) The failure by Developer to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by Developer under this Development Agreement, unless prevented by an unreasonable action of City;

(ii) If a transfer occurs in violation of **Section 15.04** of this Development Agreement; or

(iii) The knowing and intentional submission by Developer or any Developer's Representative of a report, application or certificate which contains any materially false or misleading statements.

(c) Default by District . A material breach of this Development Agreement by District (other than a Termination Event) shall occur in the following instances upon thirty (30) days' after notice from City's Representative or from Developer's Representative of such breach; provided, however, that if such breach cannot reasonably be cured within such thirty (30) day period, then no breach shall occur unless District fails to commence efforts reasonably calculated to effect such cure within such thirty (30) day period and fails to cure such breach within forty-five (45) days after the initial notice of such material breach (notwithstanding District's diligent prosecution of its curative efforts), exclusive of a Force Majeure Event:

(i) The failure by District to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by District under this Development Agreement, unless prevented by an unreasonable action of City;

(ii) The entry of a non-appealable ruling by a court of competent jurisdiction that District is terminated or was not formed according to law or that any actions taken by District are beyond the authority conferred upon District by any Governmental Rules;

(iii) The knowing and intentional submission by District or any District's Representative of a report, application or certificate which contains any materially false or misleading statements; or

(vi) If District fails to permit OIR to conduct an audit authorized by this Development Agreement, or having commenced such audit, to permit City to complete the same without its efforts being impeded by District or its agent(s).

Section 14.04. Remedies of City For A Material Breach By Developer or District Under Section 14.03.
" 12

(a) Scope . After expiration of any applicable cure period and delivery of any required notice, City may pursue, at its option and without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to City under law, this Development Agreement, and/or any written guaranty provided to City under the terms of this Development Agreement.

(b) Remedies Cumulative . The rights and remedies provided to City in this Development Agreement shall be in addition to and cumulative of all other rights and remedies available to City against Developer or District as applicable, upon an uncured material breach of this Development Agreement by Developer or District, and City will have the right to pursue all such other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

Section 14.05. Remedies of Developer and District For A Material Breach By City Under Section 14.03

(a) Scope . After the expiration of any applicable cure period and upon delivery of any required notice, District or Developer may pursue, at each such Party's option, without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to Developer or District under law, this Development Agreement, and/or any written guaranty provided by Developer under the terms of this Development Agreement.

(b) Remedies Cumulative . The rights and remedies provided to Developer and District in this Development Agreement shall be in addition to and cumulative of all other rights and remedies available to District or Developer, as applicable, upon an uncured material breach of this Development Agreement by City, and Developer or District will have the right to pursue all such other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

Section 14.06. Mediation .

In the event of a dispute by the Parties to this Development Agreement which cannot, within a reasonable time, be resolved, the Parties agree to submit the disputed issue to non-binding mediation. The Parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within seven (7) days after the mediation is initiated or fourteen (14) days after mediation is requested. The Parties participating in the mediation shall share the costs of the mediation as follows: one-third (1/3rd) paid by City, one-third (1/3rd) paid by District and one-third (1/3rd) paid by Developer. The provisions hereof shall survive any termination of this Development Agreement with respect to any mediation proceedings instituted prior thereto.

Section 14.07. Effect of Termination of Development Agreement on District .

Upon termination of this Development Agreement after the Election Date, District shall not incur any debt, shall not levy or collect any taxes and shall not take any further actions without approval of City Council. If this

Development Agreement is terminated for any reason other than a default hereunder by City, all Reimbursement Agreements, Inferior Debt or other indebtedness of District to Developer will be rendered thereby void and unenforceable. The provisions of this **Section 14.07** shall survive any termination of this Development Agreement.

Section 14.08. Survival of Development Restrictions .

Upon termination of this Development Agreement after the Hotel Completion Date, all development restrictions imposed pursuant to either this Development Agreement or to any exhibit to this Development Agreement shall fully survive such termination until such time as City may annex all of the Land.

ARTICLE 15. BINDING AGREEMENT, AMENDMENT, AND ASSIGNMENT

Section 15.01. Beneficiaries .

This Development Agreement shall bind and inure to the benefit of the Parties, their successors and assigns. The terms of this Development Agreement shall bind the Parties.

Section 15.02. Audit .

District will provide to OIR such financial reports and any other financial information which may be reasonably requested by OIR from time to time and which is not privileged information under applicable law. All such financial reports and any and all other financial information or reports reasonably required by OIR will be made available to OIR, and/or its designee, for purposes of City's determination by audit that District is in apparent compliance with the terms of this Development Agreement. District agrees to provide the requested information on a timely basis to OIR. All applicable books, records and information of District, together with all supporting documentation generated directly or indirectly because of this Development Agreement, shall be preserved by District in Bexar County, Texas, for five (5) years after the period to which they relate or until all audits, if any, relating to those documents are complete and any and all findings have been resolved fully, and any litigation shall be finally resolved, whichever is the greater period of time. City, if it elects, has the right to require that any or all of such books, records, and information be submitted for audit to OIR, to a Certified Public Accountant selected by City, or to any person designated by the City Representative. The provisions hereof shall survive any termination of this Development Agreement.

Section 15.03. Assignment .

The Parties shall not assign (partially or in the entirety) any rights under this Development Agreement without prior written consent of each other Party, such consent to not be unreasonably withheld.

Section 15.04. Transfer of Control of Developer .

Developer understands and acknowledges that the rights and duties of Developer as set forth in this

Development Agreement are personal to Developer and that City has entered into this Development Agreement in reliance upon the business skills, financial resources and reputation of Developer. Accordingly, until the Hotel Completion Date, no Developer Entity may complete a Developer Transfer except in accordance with the provisions set forth in **Subsection 15.04(a)** below. Any purported Developer Transfer, by operation of law or otherwise, not in accordance with **Subsection 15.04(a)**, as applicable, shall be null and void and shall constitute a material breach of this Development Agreement by Developer.

(a) Developer Transfer Prior to Hotel Completion Date . Prior to the Hotel Completion Date, a Permitted Transfer by a Developer Entity shall be permitted without the prior, written consent of City. Any Developer Transfer that is not a Permitted Transfer shall require prior, written consent of City. For the purposes of this **Section 15.04**, a “*Permitted Transfer*” means one of the following: (a) any Developer Transfer which, when combined with all other transfers which occurred in the twelve (12) months immediately preceding such Developer Transfer, is of less than a Controlling Interest in that Developer Entity; (b) any Developer Transfer of more than a Controlling Interest in a Developer Entity which does not result in a “substantial change in the management” (herein defined) of Developer Entity for a period of twelve (12) months after the effective date of the Developer Transfer; or (c) any Developer Transfer to the shareholders of any publicly held corporation which now owns more than fifty-one percent (51%) of the stock in Developer, or (d) any Developer Transfer resulting from any merger, consolidation or reorganization of Temple-Inland, Inc. involving all or substantially all of its shares or properties; (e) any Developer Transfer resulting from a sale of substantially all of the properties of Temple-Inland, Inc.; (f) any Developer Transfer to a transferee that has a net worth or shareholders’ equity of Twenty Million Dollars (\$20,000,000.00) ; (g) any Developer Transfer after all of the Letters of Credit have been provided in accordance with this Development Agreement and the Golf Course Management Plan. Further, for the purposes hereof, the phrase “*substantial change in the management*” means the departure, divestiture or re-assignment of individual(s) presently in the management of Developer who, prior to such departure, divestiture or re-assignment (actual or de facto) were able to direct or cause the direction of the actions and policies of the Developer Entity, whether acting singly or in unison with others, and who, following such departure, divestiture or re-assignment, no longer possess such ability or authority.

(b) Developer Transfer After Hotel Completion Date . After the Hotel Completion Date, there shall be no requirement to attain any type of approval of City for any Developer Transfer.

(c) Approvals . For any Developer Transfer, prior to such Developer Transfer, Developer shall provide to City a written notice and explanation in reasonable detail of each Developer Transfer, and shall provide on a timely basis such additional information as City may reasonably require in order to determine whether the applicable criteria in **Subsection 15.04(a)** has been satisfied. For any Developer Transfer requiring City’s prior approval, within thirty (30) days after City’s receipt of the foregoing information, City shall advise Developer of its approval or disapproval of the requested Developer Transfer and if City disapproves the request, City shall specify the reasons for such disapproval. If City fails to respond within the thirty (30) day period, the Developer Transfer shall be deemed to be approved. City agrees it shall not unreasonably withhold its approval.

Section 15.05. Restrictions on Sale .

Neither Developer nor District shall transfer, sell, encumber, lease or convey any Open Space Restricted Tract or any Golf Course/Open Space Tracts (other than as described in or contemplated by this Development Agreement), or any portion thereof or interest therein, without the prior, written consent of City Council, and any attempted conveyance of any of such properties shall be void and of no legal effect.

ARTICLE 16. CAPACITY OF CITY

Section 16.01. City Council Approval .

Notwithstanding anything to the contrary set forth in this Development Agreement, District and Developer recognize and agree that any contracts or agreements contemplated to be entered into by City under the terms of this Development Agreement which are entered into after the date of this Development Agreement will be subject to the prior approval of the City Council, if the approval of the City Council is required under the terms of City's Charter or other applicable law.

Section 16.02. Capacity of City .

(a) Without in any way limiting or exercising the obligation, duties, covenants and agreements of City as a Party to this Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of City's required Governmental Functions shall not cause or constitute a default by City under this Development Agreement or any other Project document or give rise to any rights or claims for damages or injury against City in its capacity as a party to the Development Agreement. For purposes of this **ARTICLE 16, "Governmental Function"** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority. Developer's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims against City as a charter city and governmental entity. The provisions hereof shall survive any termination of this Development Agreement.

(b) No set-off, reduction, withholding, deduction or recoupment shall be made in or against any payment due by Developer or District to City under this Development Agreement.

Section 16.03. Capacity of Parties Acting on Behalf of City .

Notwithstanding anything to the contrary in this Development Agreement, all references in this Development Agreement to employees, agents, representatives, contractors and the like of City shall refer only to such persons or entities acting on behalf of City in its capacity as a Party to this Development Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of City's other Governmental Functions.

Section 16.04. No Limitation on City's Governmental Functions .

The parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Development Agreement by City (as a party to this Development Agreement) shall be binding upon, constitute a waiver by or estop City from exercising in good faith any of its rights, powers or duties in its required Governmental Functions. For example, approval by City of this Development Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, City's Fire Department, Building Inspections Department, Public Works Department, Planning Department and Economic Development Department or other approval required by City Code of San Antonio, Texas, or Governmental Rules.

ARTICLE 17. MISCELLANEOUS PROVISIONS

Section 17.01. Notices .

The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Development Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Development Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party, (i) by delivering the same in person, (ii) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, or (iii) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified, or (iv) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date following such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

CITY: City of San Antonio
100 Military Plaza, 1st Floor
San Antonio, Texas 78207
Attention: Director of Development Services

With copies to: City Clerk
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205, and

City Attorney
100 Military Plaza, 3rd Floor
San Antonio, Texas 78205

DEVELOPER: Lumbermen's Investment Corporation
5495 Beltline Road, Suite 225
Dallas, Texas 75240
Attention: President

With a copy to: Lumbermen's Investment Corporation
1300 S. MoPac Expressway

04/01/02

Austin, Texas 78746
Attention: General Counsel

DISTRICT:

Cibolo Canyon Conservation and Improvement District No. 1
c/o Akin, Gump, Strauss, Hauer & Feld, L.L.P.
300 Convent, Suite 1500
San Antonio, Texas 78205

With a copy to:

Akin, Gump, Strauss, Hauer & Feld, L.L.P.
300 Convent, Suite 1500
San Antonio, Texas 78205
Attention: M. Paul Martin

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

Section 17.02. Business Days .

If any date or any period provided in this Development Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Section 17.03. Time .

Time is of the essence in all things pertaining to the performance of this Development Agreement.

Section 17.04. Severability .

If any provision of this Development Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Development Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Development Agreement will not be affected.

Section 17.05. Waiver .

Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Development Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Development Agreement.

Section 17.06. Reservation of Rights .

To the extent not inconsistent with this Development Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

Section 17.07. Further Documents .

The Parties agree that at any time after execution of this Development Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Development Agreement.

Section 17.08. Incorporation of Exhibits and Other Documents by Reference .

All Exhibits and other documents attached to or referred to in this Development Agreement are incorporated herein by reference for the purposes set forth in this Development Agreement.

Section 17.09. Authority for Execution .

City hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with City Charter and City Ordinances. Developer hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws of such entity. District hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with the Act and has been approved by its Board of Directors.

Section 17.10. Governing Law; Venue .

THIS DEVELOPMENT AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR COUNTY, TEXAS.

Section 17.11. Attorneys' Fees .

If any Party to this Development Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Development Agreement and the other Party thereto places the enforcement of this Development Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Development Agreement into any judgment on this Development Agreement.

Section 17.12. No Oral Modification .

Any agreement hereafter made shall be ineffective to change, waive, modify, discharge, terminate, or effect an abandonment of this Development Agreement in whole or in part unless such agreement is in writing and signed by the Party against whom such charge, waiver, modification, discharge, termination or abandonment is sought to be enforced.

Section 17.13. No Party Deemed Drafter .

Each Party has thoroughly reviewed and revised this Development Agreement and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter thereof.

Section 17.14. Use of Defined Terms .

Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Development Agreement or any Exhibits hereto and any other instruments, documents and agreements shall include this Development Agreement, Exhibits and other instruments, documents and agreements as originally executed or existed and as the same may from time to time be supplemented, modified or amended.

Section 17.15. Multiple Counterparts .

This Development Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties.

Section 17.16. Entire Agreement, Amendment and Waiver, Survival .

This Development Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Development Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of City, approved by action of City Council and in the case of District, approval by action of its Board of Directors. No failure or delay of any Party in exercising any power or right under this Development Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right of power, preclude any other or future exercise thereof or the exercise of any other right or power. All of the representations and warranties of each Party contained in this Agreement shall survive the execution, delivery and acceptance of this Development Agreement and any termination hereof. Unless otherwise set forth in this Development Agreement, all agreements of the Parties contained in this Development Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this

Development Agreement to so survive.

Section 17.17. Table of Contents; Headings .

The table of contents and headings of the various articles, sections and other subdivisions of this Development Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Development Agreement.

Section 17.18. Parties In Interest .

The terms of this Development Agreement shall be binding upon, and insure to the benefit of, the Parties hereto and their permitted successors and assigns. Nothing in this Development Agreement, whether express or implied, shall be construed to give any person (other than the Parties hereto and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Development Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Development Agreement.

Section 17.19. Notices of Changes in Fact .

Promptly after either Party becomes aware of same, such Party will notify the other Party of (i) any change in any material fact or circumstance represented or warranted by such Party in this Development Agreement, and (ii) any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Development Agreement, specifying in each case, the nature thereof and what action such Party has taken, is taking and proposes to take with respect thereto. Such notice shall not delay or impede the exercise of remedy which City has under this Development Agreement or otherwise.

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04/01/02

THEREFORE, IN WITNESS WHEREOF, City and Developer have executed this Development Agreement
this _____ day of _____, 2002.

CITY OF SAN ANTONIO

_____, City Manager

DEVELOPER:

LUMBERMEN'S INVESTMENT CORPORATION

_____, President

This Development Agreement is hereby ratified and executed by District as of this _____ day of
_____, 2002.

**CIBOLO CANYON CONSERVATION
AND IMPROVEMENT DISTRICT NO. 1**

_____, President, Board of Directors

04/01/02

EXHIBIT A
PUBLIC IMPROVEMENTS

04/01/02

EXHIBIT B
DEVELOPMENT PLAN

04/01/02

EXHIBIT C
DEVELOPMENT SCHEDULE

04/01/02

EXHIBIT D
GOLF COURSE MANAGEMENT PLAN

04/01/02

EXHIBIT E
LAND USE RESTRICTIONS
[Declaration of Restrictive Covenants]

04/01/02

EXHIBIT F
FORM OF LETTER OF CREDIT

04/01/02

EXHIBIT G
FORM OF MUNICIPAL SERVICES AGREEMENT

EXECUTION PAGE OF DEVELOPMENT AGREEMENT

EXHIBIT H

PROPERTY DESCRIPTION OF OPEN SPACE RESTRICTED TRACTS

- i. Tract 1 - 247.1 acres comprised of: Tract 1A - 234.9 acres and Tract 1B - 12.2 acres
- ii. Tract 2 - 594.61 acres, being 785.4 acres save and except Tract 2A - 113.1 acres and
save and except Tract 2B - 77.69 acres
- iii. Tract 3 - 258.1 acres

04/01/02

EXHIBIT I

FORM OF TRAIL HEAD TRACT LEASE

04/01/02

EXHIBIT J

FORM OF WATER PROVISION AGREEMENT

EXECUTION PAGE OF DEVELOPMENT AGREEMENT

04/01/02

EXHIBIT K

FORM OF WATER SERVICE AGREEMENT LETTER